

NO. 24-1434

United States Court of Appeals
for the
Fourth Circuit

In re: INVESTORS WARRANTY OF AMERICA, LLC,

Petitioner

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND AT GREENBELT

RESPONDENT'S APPENDIX

VOLUME TWO (Pages 266-573)

WILLIAM M. BOSCH
PILLSBURY WINTHROP SHAW PITTMAN LLP
1200 Seventeenth Street, NW
Washington DC 20036
(202) 663-8000
william.bosch@pillsburylaw.com

JEFFREY P. METZLER
PILLSBURY WINTHROP SHAW PITTMAN LLP
31 West 52nd Street
New York, NY 10019
(212) 858-1000
jeffrey.metzler@pillsburylaw.com

Attorneys for Respondent

TABLE OF CONTENTS

VOLUME ONE

District of Maryland Case Docket Sheet Dated June 13, 2024, *Rock Spring Plaza II, LLC v. Investors Warranty of America, LLC et al*,
Case No. 8:20-cv-01502-PJM..... A1

IWA’s Motion to Dismiss [ECF No. 13]
Filed June 29, 2020..... A44

Memorandum in Support..... A47

Exhibit 1 – Amended and Restated Ground Lease..... A71

Exhibit 2 – Estoppel Agreement..... A140

District Court Memorandum Order [ECF. 151]
Filed August 3, 2022..... A156

Plaza’s Second Amend Complaint [ECF No. 196]
Filed December 8, 2022..... A177

District Court Order [ECF No. 227]
Filed January 17, 2023..... A190

Plaza’s Notice of Filing its Motion to Compel and Request for *In Camera* Review
[ECF No. 238]
Filed January 25, 2023..... A191

Plaza’s Motion to Compel..... A194

Exhibit A – Letter to R. Davis from K. Danial..... A209

Exhibit B – Letter to K. Danial from R. Davis..... A212

Exhibit C – Letter to R. Davis from K. Danial..... A215

Exhibit D – Letter to K. Danial from R. Davis..... A219

Exhibit E – Email to R. Davis from K. Danial.....	A223
Exhibit F – Letter to R. Davis from K. Danial.....	A225
Exhibit G – Letter to K. Danial from R. Davis.....	A229
Exhibit K – RSD Registration Information.....	A236
Exhibit M – Excerpt of IWA’s Privilege Log for <i>In Camera</i> Review.....	A238
Exhibit N – IWA’s Second Amended Privilege Log.....	A244
Exhibit O – Email to G. Van Gorp and T. Taylor from P. Rubin.....	A259
Exhibit P – Memorandum to T. Taylor from P. Rubin.....	A261
District Court Memorandum Order [ECF No. 290] Filed March 15, 2023	A263
IWA’s Response re: March 15, 2023, Memorandum Order [ECF No. 292] Filed March 20, 2023	A265

VOLUME TWO

Plaza’s Response to IWA’s Brief Seeking Reconsideration of the Applicability of the Crime-Fraud Exception [ECF No. 310] Filed April 18, 2023	A266
Declaration of K. Danial	A300
Exhibit A – D. Feltman Deposition Transcript Excerpts	A302
Exhibit B – R. Barron Deposition Transcript Excerpts.....	A322
Exhibit C – T. Taylor Deposition Transcript Excerpts	A350

IWA’s Reply in Support of its Brief, Pursuant to the Court’s March 15, 2023 Order,
in Support of Reconsideration of the Applicability of the Crime-Fraud Exception
[ECF No. 312]

Filed April 25, 2023	A368
Exhibit A – February 16, 2023, Hearing Transcript Excerpts	A363
Exhibit B – Declaration of R. Davis	A397
Exhibit 1 – P. Rubin Deposition Transcript Excerpts.....	A400
Exhibit 2 – R. Barron Deposition Transcript Excerpts	A405
Exhibit 3 – T. Taylor Deposition Excerpts.....	A435
Exhibit 4 – R. Barron Resume	A449
Exhibit 5 – D. Feltman Deposition Transcript Excerpts	A456
Exhibit 6 – M. Pithan Deposition Transcript Excerpts	A473
Exhibit C – Trustee’s Deed of Assignment	A476
District Court Order [ECF No. 314]	
Filed May 25, 2023	A484
District Court Order [ECF No. 340]	
Filed August 17, 2023	A485
District Court Memorandum [ECF No. 341]	
Filed August 17, 2023	A487
District Court Order [ECF No. 346]	
Filed August 23, 2023	A488
Memorandum Order [ECF No. 386]	
Filed February 21, 2024.....	A489

February 22, 2024 Hearing Transcript	A490
Memorandum Order [ECF No. 389] Filed February 22, 2024.....	A515
Plaza’s Motion to Unseal Crime-Fraud Information [ECF No. 392] Filed March 4, 2024.....	A517
Memorandum Order [ECF No. 404] Filed April 24, 2024.....	A526
May 1, 2024 Hearing Transcript.....	A527
Memorandum Order [ECF No.405] Filed May 2, 2024.....	A571

VOLUME THREE (SEALED)

Plaza’s Motion for Partial Summary Judgment [ECF No. 127] Filed September 13, 2021	A574
Memorandum in Support	A577
Exhibit A – December 1, 2020 Transcript.....	A609
Exhibit C – Ground Lease.....	A666
Exhibit F – Letter to Landlord from D. Feltman.....	A732
Exhibit Q – IWA Value Consultation	A734
Exhibits to Plaza’s Motion to Compel and Request for <i>In Camera</i> Review Filed January 25, 2023 [ECF No. 238.1] Exhibit H – Email Correspondence, N. Hutchinson, D. Wirtjes, M. Pithan, and D. Feltman	A775
Exhibit I – Email to D. Feltman from N. Koluch	A779
Exhibit J – Email to R. Barron and J. Guso from D. Feltman	A782

Exhibit L – RSD Operating AgreementA784

Plaza’s Reply in Support of its Motion to Compel Against IWA and Request for *In Camera* Review [ECF No. 238.3]
Filed January 25, 2023 A838

Exhibit A – Email J. Sowka Forwarded to G. Snitker..... A847

Exhibit B – RSD Term Sheet A850

Exhibit C – Email N. Hutchinson to D. Wirtjes, J. Gilmore A857

Exhibit D – Email N. Hutchinson to M. Pithan, G. Van Gorp..... A861

Memorandum Opinion [ECF No. 339]
Filed August 17, 2023A863

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

ROCK SPRING PLAZA II, LLC

Plaintiff,

v.

INVESTORS WARRANTY OF AMERICA,
LLC, et al.,

Defendants.

Civil Action No. 8:20-cv-01502-PJM

**PLAINTIFF'S RESPONSE TO DEFENDANT INVESTORS WARRANTY OF
AMERICA, LLC'S BRIEF SEEKING RECONSIDERATION OF
THE APPLICABILITY OF THE CRIME-FRAUD EXCEPTION**

TABLE OF CONTENTS

	<u>Page</u>
I. SUMMARY OF ARGUMENT	1
II. ARGUMENT	5
A. The Court’s In Camera Review and Isolation of Three Documents Suggestive of Fraud Was Entirely Proper	5
1. Applying the crime-fraud exception to the attorney-client privilege promotes a just and fair resolution.....	5
2. The documents reviewed in camera provided the requisite prima facie evidence to apply the crime-fraud exception	6
3. IWA invites error when it suggests that Plaintiff must prove fraud for the crime-fraud exception to apply	8
4. The Court has ample evidentiary support for applying the crime-fraud exception in the exercise of its discretion	9
5. IWA has been given all process that is due before the documents may be disclosed to Plaintiff	10
B. Witness Testimony After the Feb. 16th Hearing Belies IWA’s Argument that the Crime-Fraud Exception Should Not Apply	13
1. The Assignment was negotiated with the intention that IWA would walk away, leaving Plaintiff to chase an empty shell once the statute of limitations ran on a fraudulent conveyance claim	13
2. IWA, through RSD, intended to hinder, delay, or frustrate Plaintiff’s rights under the Ground Lease	16
3. Key parts of the exit strategy were designed to keep Plaintiff in the dark about the assignment until the SOL had run	18
4. The lawyers clearly were involved in structuring this fraudulent conveyance.....	20
5. The reason Defendants are hiding behind privilege is because there was never any intention for RSD to honor the Tenant’s long-term obligations under the Ground Lease	23
C. The Court has Discretion to Order the Three Documents to be Released	26
D. Any Relief Sought by IWA From the Court’s Order Should Occur within a Reasonable Time.....	27
III. CONCLUSION.....	28

TABLE OF AUTHORITIES

	Page(s)
<u>Cases</u>	
<i>Ardrey v. United Parcel Service</i> , 798 F.2d 679 (4th Cir. 1986)	26
<i>Chaudhry v. Gallerizzo</i> , 174 F.3d 394 (4th Cir. 1999)	8
<i>Clark v. United States</i> , 289 U.S. 1 (1933).....	5, 6, 7
<i>ContraVest Inc. v. Mt. Hawley Ins. Co.</i> , No. 20-1915, 2021 WL 4782687 (4th Cir. Oct. 13, 2021)	27
<i>Fed. Election Comm’n v. Christian Coal.</i> 178 F.R.D. 456 (E.D. Va 1998)	12
<i>Gutter v. E.I. Dupont De Nemours</i> , 124 F. Supp. 2d 1291 (S.D. Fla. 2000)	11
<i>Haines v. Liggett Grp. Inc.</i> , 975 F.2d 81 (3d Cir. 1992).....	11
<i>In re Grand Jury Proc. #5 Empanelled Jan. 28, 2004</i> , 401 F.3d 247 (4th Cir. 2005)	8, 9, 26
<i>In re Grand Jury Subpoena</i> , 642 Fed. Appx. 223 (4th Cir. 2016).....	11, 12
<i>In re Grand Jury Subpoena</i> , 884 F.2d 124 (4th Cir. 1989)	11, 26
<i>In re Grand Jury Subpoenas</i> , 144 F.3d 653 (10th Cir. 1998)	11
<i>In re Napster, Inc. Copyright Litig.</i> , 479 F.3d 1078 (9th Cir. 2007)	11
<i>Mohawk Indus., Inc. v. Carpenter</i> , 558 U.S. 100 (2009).....	27, 28
<i>Rowland v. Am. Gen. Fin., Inc.</i> , 340 F.3d 187 (4th Cir. 2003)	27

United Bank v. Buckingham,
301 F.Supp.3d 547 (D. Md. 2018)9

United States v. Zolin,
491 U.S. 554 (1989)..... passim

Statutes and Codes

United States Code
Title 28, Section 1292(b)28

Rules and Regulations

Federal Rules of Evidence
Rule 5035, 6

Other Authorities

Christopher B. Mueller, et al., EVIDENCE §5.22 (6th ed. 2018).....7

John W. Gergacz, ATTORNEY-CORPORATE CLIENT PRIVILEGE § 4:16 (Spring Ed. 2023)7

Lynn McLain, 6 MARYLAND EVIDENCE, § 503:17 (Aug. 2022).....5

PLAINTIFF’S RESPONSE TO DEFENDANT INVESTORS WARRANTY OF AMERICA, LLC’S BRIEF SEEKING RECONSIDERATION OF THE APPLICABILITY OF THE CRIME-FRAUD EXCEPTION

In accordance with the Court’s March 28, 2023, Memorandum Order (ECF No. 297), Plaintiff Rock Spring Plaza II, LLC (“Plaintiff”) hereby submits this Response to Defendant Investors Warranty of America, LLC’s (“IWA”) Brief, by which IWA seeks “Reconsideration of the Applicability of the Crime-Fraud Exception” (ECF No. 294) (the “Brief”).

The Court has broad discretion in how it resolves the crime-fraud issues presented in this case, which extends not only to deciding whether the documents at issue should continue to be withheld from discovery on privilege grounds but also to the process by which documents are disclosed. Plaintiff hereby requests that the Court order IWA to release the three documents in question within ten (10) calendar days of the order, which should allow more than sufficient time for IWA to request a stay and to pursue whatever relief it may seek from the U.S. Court of Appeals for the Fourth Circuit.

I. SUMMARY OF ARGUMENT

After the in-depth hearing on February 16, 2023 (the “Feb. 16th Hearing”), the Court issued its Order (ECF No. 286), by which the Court exercised its discretion to conduct an in camera review of a subset of 190 documents of the more than 1,190 documents IWA has withheld on privilege grounds. The sheer volume of privileged documents, in the context of what IWA and Rock Springs Drive LLC (“RSD,” collectively with IWA, “Defendants”) contend was a good faith, “ordinary course” assignment, is preposterously large.

From Plaintiff’s perspective, what followed the Court’s review is opaque given IWA’s exchange of ex parte communications with the Court (ECF Nos. 288, 289). What is clear, however, as manifested in the Court’s March 15, 2023, Memorandum (ECF No. 290), is that IWA is trying to avoid the disclosure of at least three attorney-client “exchanges” that “might be

relevant to Plaintiff's fraud theory."¹ Plaintiff does not know what these three documents reveal, but Defendants should not be permitted to hide evidence of a fraudulent conveyance behind tenuous assertions of privilege.

IWA asks the Court to "reconsider and reverse its preliminary determination" and dedicates the first half of its Brief to arguing the evidence in a way that does nothing to aid the Court in resolving the procedural questions presented.² For example, IWA continues to ignore Plaintiff's fraud evidence and what the burden of proof is at this preliminary stage (e.g., by contending that "the Court did not find tortious or criminal activity," and thus "IWA is left with the conclusion that the Court is proceeding to review IWA's privileged documents only on a contract-based theory"). Brief at 3. The fact that the Court already has identified three "privileged" documents that appear to support Plaintiff's fraud theories and the incredible lengths to which IWA is going to prevent disclosure — including threatening to pursue mandamus relief — undermine Defendants' continued refrain that "there's nothing to see here."

RSD is plainly a manufactured construct, designed by IWA in concert with its lawyers to facilitate an "exit" from the worthless Ground Lease it needed to get off its books. The more evidence Plaintiff discovers that IWA intended to hinder, delay, and defraud Plaintiff by walking away from the Ground Lease after the statute of limitations ran on its fraudulent conveyance to

¹ Although it clearly is seeking reconsideration, IWA does not style its submission as a "motion for reconsideration," and the Court did not invite such a motion in its March 15, 2023, Memorandum (ECF No. 290). If IWA is requesting "reconsideration" of the Court's prior rulings through its Brief, that request is untimely, given that the Court made its ruling on February 16, 2023, and issued its order directing IWA to produce to the Court its privileged documents for in camera review on February 21, 2023 (ECF No. 286).

² IWA in several instances argues in circles. For example, IWA contends "there is nothing in the documents that demonstrates any fraud on the part of IWA or the advice or assistance by IWA's counsel in furtherance of the fraud," Brief at 7, but then complains that "placing such communications in the hands of Plaintiff would be highly prejudicial" and would "further advantage [Plaintiff] in this case." Brief at 5, 7.

RSD, the more furtive and obstructionist Defendants become.³ Fraudulent intent is inherently difficult to prove, and Plaintiff is building its case. IWA, for its part, should not be allowed to hide the evidence of its fraudulent intent behind privilege, as that is precisely why the crime-fraud exception exists.

When IWA finally reaches its “Argument,” IWA repeats the mistake it made with its ex parte submission, where IWA evidently “devoted only a small section of [its] submission to the actual documents” (ECF No. 290), by again using its Brief to chastise the Court and trumpet cherry-picked, mischaracterized precedent. The gist of IWA’s argument is that the Court’s exercise of its discretion in reviewing a subset of documents that IWA withheld on privilege grounds was an “outcome determinative analysis” based “only on a contract-based theory” that “disregarded” sworn testimony and would lead to an “increased probability of reversible error.” Brief at 3-6.

But the only thing evidently “outcome determinative” about the disclosure of these documents is that they will help establish that the assignment to RSD was a fraudulent conveyance. Defendants offer nothing specific to refute the Court’s assertion that the three documents in question support Plaintiff’s fraud theory and are properly disclosed under the crime-fraud exception. Protesting that the documents help Plaintiff prove its case is not a legal argument against disclosure under the crime-fraud exception. If that were so, disclosure would *never* be permitted under the crime-fraud exception.

³ Just last week, for example, Plaintiff learned that RSD is relying on the *accountant-client privilege* to withhold evidence that its auditors are delaying issuance of RSD’s 2022 financial statements (which are months overdue) because of changes to reporting standards that would show RSD is a worthless shell under generally accepted accounting principles (“GAAP”).

IWA's due process concerns similarly have no basis in law or fact. Plaintiff has made both a threshold and a prima facie showing sufficient to invoke the crime-fraud exception, and Defendants now have had three occasions to attempt to rebut this showing.⁴ They have not done so because they cannot do so. For example, IWA props up its corporate witness, David Feltman, as "evidence" against fraud but tellingly fails to cite *any* of his testimony. Even though Plaintiff has already met its burden for the Court to apply the crime-fraud exception, Plaintiff will share some of Mr. Feltman's testimony in this responsive Brief, as it not only validates the Court's initial decision to conduct the in camera review but also provides a compelling evidentiary basis for applying the crime-fraud exception to *more* than just the three documents already identified by the Court.

Furthermore, threatening mandamus (which is granted only in the most extraordinary circumstances, not present here) merely confirms that Defendants know their assertions that IWA made a bona fide assignment to a third party in good faith are demonstrably false. Indeed, the issue here is not whether disclosure of the three documents in question will vitiate the attorney-client privilege. Rather, it is whether Defendants can hide documents supporting Plaintiff's contention that IWA worked in concert with its lawyers to perpetrate a fraudulent conveyance as part of IWA's efforts to get out from under its financial obligations to Plaintiff when the documents are not privileged as a matter of Maryland law *in the first place*. The Court is certainly acting well within its discretion, on the record already before the Court, to disclose at least the three documents that support Plaintiff's fraud theories.

⁴ At the Feb. 16th Hearing, Defendants' counsel feigned ignorance about Plaintiff's fraud claims and clung to the "badges of fraud" alleged in the complaint. Even now, after Plaintiff has several times laid out in detail its theories and evidence supporting its fraudulent conveyance claim, Defendants refuse to address straight on what this case is about.

II. ARGUMENT

A. The Court's In Camera Review and Isolation of Three Documents Suggestive of Fraud Was Entirely Proper

Despite appearing at the Feb. 16th Hearing, communicating with the Court ex parte, and citing the seminal case in its Motion,⁵ IWA misses the fact that that the Court has already found that Plaintiff made a prima facie showing sufficient to trigger the crime-fraud exception to the attorney-client privilege. The Court has broad discretion in resolving questions pertaining to discovery and privilege, including application of the crime-fraud exception. IWA has not pointed and cannot point to anything even remotely constituting an abuse of discretion by the Court.

1. Applying the crime-fraud exception to the attorney-client privilege promotes a just and fair resolution

The attorney-client privilege is not absolute. As expressed by the Supreme Court in 1933, “[a] client who consults an attorney for advice that will serve him in the commission of a fraud will have no help from the law. He must let the truth be told.” *Clark v. United States*, 289 U.S. 1, 15 (1933). The crime-fraud exception, as it is known, is not codified in the Federal Rules of Evidence but is governed by common law. Lynn McLain, 6 MARYLAND EVIDENCE, § 503:17 (Aug. 2022).

Rule 503 of the Federal Rules of Evidence, proposed by the Supreme Court in the early 1970's, provides that “there is no privilege under this rule...if the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud.” *Id.* While Congress did not adopt the rule, when it was proposed it “was declarative of common law” and still “provides a useful summary and starting point for federal courts, which look to it for guidance.” *Id.* The Advisory Committee

⁵ *United States v. Zolin*, 491 U.S. 554 (1989).

Notes to Fed. R. Evid. 503 cite *Clark* when speaking to the showing required, stating: “No preliminary finding that sufficient evidence aside from the communication has been introduced to warrant a finding that the services were sought to enable the commission of a wrong is required.” 56 F.R.D. 183, 239-40.

Over 50 years after *Clark* was decided, the Supreme Court further expounded upon the crime-fraud exception and the limits of the attorney-client privilege in *United States v. Zolin*, stating:

The attorney-client privilege is not without its costs. Cf. *Trammel v. United States*, 445 U.S. 40, 50 (1980). “[S]ince the privilege has the effect of withholding relevant information from the factfinder, it applies only where necessary to achieve its purpose.” *Fisher v. United States*, 425 U.S. 391, 403 (1976). The attorney-client privilege must necessarily protect the confidences of wrongdoers, but the reason for that protection—the centrality of open client and attorney communication to the proper functioning of our adversary system of justice—“ceas[es] to operate at a certain point, namely, where the desired advice refers not to prior wrongdoing, but to future wrongdoing.” 8 Wigmore, § 2298, p. 573 (emphasis in original); see also *Clark v. United States*, 289 U.S. 1, 15, (1933). **It is the purpose of the crime-fraud exception to the attorney-client privilege to assure that the “seal of secrecy,” *ibid.*, between lawyer and client does not extend to communications “made for the purpose of getting advice for the commission of a fraud” or crime.** *O’Rourke v. Darbishire*, [1920] A.C. 581, 604 (P.C.).

Zolin, 491 U.S. at 562-63 (1989) (emphasis added). Here, there is no question that IWA is hiding evidence of its lawyer-guided strategy behind privilege to hinder, delay, or defraud Plaintiff.

2. The documents reviewed in camera provided the requisite prima facie evidence to apply the crime-fraud exception

Courts have broad discretion to determine whether a privilege is properly asserted. *Zolin*, 491 U.S. at 569-70 (“This Court has approved the practice of requiring parties who seek to avoid disclosure of documents to make the documents available for in camera inspection ... and the practice is well established in federal courts.”). In *Clark*, the Supreme Court held that a prima facie showing was necessary to invoke the crime-fraud exception:

The privilege takes as its postulate a genuine relation, honestly created and honestly maintained. If that condition is not satisfied, if the relation is merely a sham and a pretense, the juror may not invoke a relation dishonestly assumed as a cover and cloak for the concealment of the truth. In saying this we do not mean that a mere charge of wrongdoing will avail without more to put the privilege to flight. There must be a showing of a prima facie case sufficient to satisfy the judge that the light should be let in It is obvious that it would be absurd to say that the privilege could be got rid of merely by making a charge of fraud... To drive the privilege away, there must be something to give colour to the charge; there must be prima facie evidence that it has some foundation in fact.... When that evidence is supplied, the seal of secrecy is broken.

289 U.S. 1, 14-15 (1933) (internal citations and quotations omitted).

In *Zolin*, the Supreme Court held that “in camera review may be used to determine whether allegedly privileged attorney-client communications fall within the crime-fraud exception,” after the moving party meets a threshold showing. 491 U.S. 554, 574 (1989). The threshold showing requires less than the prima facie showing, of “evidence sufficient to support a reasonable belief that in camera review may yield evidence that establishes the exception’s applicability.” *Id.* at 574-75. To meet the threshold showing necessary for in camera review, a party may offer any relevant evidence that has been “lawfully obtained” and that has not already been adjudicated to be privileged. *Id.* at 575.

Zolin “integrated an in camera inspection of materials with an initial showing that would be less than that required to establish the crime-fraud exception.” John W. Gergacz, ATTORNEY-CORPORATE CLIENT PRIVILEGE § 4:16 (Spring Ed. 2023). “Thus a communication can be found within the exception **based on the content of the communication itself**”: after a threshold showing, *in camera* review of the purportedly privileged materials may be used to establish the prima facie showing sufficient to invoke the crime-fraud exception. Christopher B. Mueller, et al., EVIDENCE §5.22 (6th ed. 2018) (emphasis added).

The Fourth Circuit has “held that the party invoking the crime-fraud exception must make a prima facie showing that (1) the client was engaged in or planning a criminal or

fraudulent scheme when he sought the advice of counsel to further the scheme, and (2) the documents containing the privileged materials bear a close relationship to the client's existing or future scheme to commit a crime or fraud." *In re Grand Jury Proc. #5 Empanelled Jan. 28, 2004*, 401 F.3d 247, 251 (4th Cir. 2005) (citing *Chaudhry v. Gallerizzo*, 174 F.3d 394, 403 (4th Cir. 1999)). When the Court examines in camera "the actual documents for which privilege is claimed" to meet the prima facie showing, *Zolin* controls. *Id.* at 252.

Here, the Court determined that Plaintiff met the threshold showing to proceed to in camera review at the Feb. 16th Hearing (Feb. 16 Hr'g Tr. 81: 16-18) ("I think there's enough that a reasonable person could conclude that possibly there's been a fraud exception"). After reviewing the selected documents in camera, the Court isolated three documents "that it determined might be relevant to Plaintiff's fraud theory." ECF No. 290. Plaintiff has neither seen the three documents nor was it privy to the ex parte communications with IWA that led to the current briefing. Notably, if the Court determined that the documents reviewed in camera did not make the prima facie showing, it could have requested additional evidence from Plaintiff, or it could have denied the applicability of the crime-fraud exception. Instead, and consistent with *Zolin*, the Court isolated three documents that evidently bear a close relationship to IWA's existing or future scheme to commit a fraud and gave IWA multiple opportunities to respond. The Court clearly has exercised its discretion and may properly rule now that the documents must be disclosed under the crime-fraud exception.

3. IWA invites error when it suggests that Plaintiff must prove fraud for the crime-fraud exception to apply

IWA simply gets it wrong when it contends "Plaintiff cannot make a showing of fraud under Maryland law, and thus cannot meet the crime-fraud exception." Brief at 9. At this stage, to invoke the crime-fraud exception and require production of the three documents identified by

the Court, the Plaintiff “does not have to conclusively prove the elements of the purported crime or fraud.” *United Bank v. Buckingham*, 301 F.Supp.3d 547, 555 (D. Md. 2018) (citation omitted).

The Court explained this to IWA at the Feb. 16th Hearing:

I don’t think you – maybe we misapprehend what happens at this point. **I don’t make a finding that there’s fraud based on what I review in your documents.** I mean, I might find some further questionable practices let’s say. I don’t make that finding. All I say is it’s out there to be argued. Plaintiffs get a chance to see it, you get a chance to oppose it. But I don’t make that finding as a finder of fact. I suppose **it’s a tentative finding that I make in my discretionary authority that there’s a reason to pierce the privilege because there looks like there’s some badge of fraud here.** That’s all I’m making, but it’s not definitive. It’s not final. **It’s just a matter of putting it out there in the pool for discovery.** So I think there’s a subtle, but important difference here that I am not finding finally that there’s fraud.

Feb. 16 Hr’g Tr. 93: 5-19 (emphasis added). The stakes are high, but that is no excuse for ignoring established law under the Supreme Court’s *Zolin* decision, the Fourth Circuit authority of *Chaudry* and *Grand Jury Proc. #5*, and this Court’s proper application of that law during the Feb. 16th Hearing.

4. The Court has ample evidentiary support for applying the crime-fraud exception in the exercise of its discretion

IWA argues that its documents withheld on privilege grounds do not demonstrate fraud, claiming that “no attorney advised IWA to engage in any conduct that the Court has identified as questionable.” Brief at 10. IWA continues to feign ignorance of Plaintiff’s evidence that the assignment of the Ground Lease from IWA to RSD was a fraudulent conveyance and was more than “sharp dealing.” The Court saw through the same argument at the Feb. 16th Hearing⁶ and is now well aware of documentary evidence that the purported assignment is a fraudulent exit strategy by IWA to get a worthless ground lease with long-term obligations off its books by assigning it to a sham entity:

⁶ Feb. 16 Hr’g Tr. 141:18-19 (“Now I don’t think you don’t know what’s going on. You do.”).

Right now it is clear to me from what you have said, Mr. Bosch, that there was some -- a lot of hidden dealing going on on defendants' side and clearly they were trying to hide information from the landlord about what they were trying to accomplish. Presumably, I don't know that this is absolutely the inference, but presumably to think they could walk away unscathed from this which I don't think they could.

Feb. 16 Hr'g Tr. 78:18-24.

In both its briefing and hearing testimony, Plaintiff presented evidence that IWA was exploring with counsel how to walk away from the Ground Lease as early as July 2016 (Feb. 16 Hr'g Tr. 56:1-10), was aware of the risk of a fraudulent conveyance claim (Feb. 16 Hr'g Tr. 61:4 - 65:6), created a new entity and did not commit to fund it even though it had no income and no source of funding apart from IWA (Feb. 16 Hr'g Tr. 58:9 - 59:6), and not only dodged Plaintiff's inquiries for months but prohibited communication with Plaintiff until the statute of limitations had run. Feb. 16 Hr'g Tr. 71:20 -72: 8. This is a far cry from the "three documents" to which IWA seeks to reduce Plaintiff's evidence establishing a threshold showing (Brief at 8). The Court also recognized that IWA, with its attorney's blessing, tried to cover its tracks by failing to record the deed reflecting the purported transfer of ownership.⁷ Tellingly, both Defendant's argument that Plaintiff "has offered only three documents in support of its fraud claim" and its bald assertion the Assignment was done in good faith are made without citation to record evidence.

5. IWA has been given all process that is due before the documents may be disclosed to Plaintiff

The Court offered IWA a fair opportunity at the Feb. 16th Hearing to refute the threshold showing made by Plaintiff and then gave IWA an opportunity to specifically address the Court's

⁷ See also Feb. 16 Hr'g Tr. 80:7-9 ("The fact that you say, Ms. Kropf, you've got an explanation for not recording the deed, it is questionable. I mean, I've been doing appellate law and judging for many years now and it's questionable. You don't see that very often, why a deal doesn't get recorded.").

preliminary finding that there are three documents that bear a close relationship to the alleged fraudulent conveyance and therefore establish a prima facie basis for applying the crime-fraud exception. The Fourth Circuit has expressly held that in camera review “of evidence supporting applicability of the crime-fraud exception” does not violate due process. *In re Grand Jury Subpoena*, 884 F.2d 124, 126 (4th Cir. 1989). Even now, with its third bite at that apple, IWA does not and cannot rebut Plaintiff’s showing. Nor can it establish any genuine due process violation.

Once the Court exercises its discretion to conduct an in camera review, the question then becomes what process is due before documents may be disclosed. Despite IWA’s threats to seek a writ of mandamus, the Fourth Circuit has made clear that “the determination of whether a privilege applies [is] reserved for the trial judge.” *In re Grand Jury Subpoena*, 642 Fed. Appx. 223, 227 (4th Cir. 2016); *see also In re Grand Jury Subpoena*, 884 F.2d at 127.⁸

An earlier decision by the Eastern District of Virginia confirms that the Court has properly and reasonably exercised its discretion here by giving IWA many opportunities to specifically address the three documents the Court evidently believes are not privileged under the

⁸ The Tenth Circuit has discouraged the district courts from “allow[ing] the determination of the applicability of the crime-fraud exception to turn into mini-trials that would waste resources and delay the [] proceedings.” *In re Grand Jury Subpoenas*, 144 F.3d 653, 661 (10th Cir. 1998). On the other side of the spectrum, the Third Circuit has recognized the right in civil cases of the non-moving party to be heard after the prima facie showing has been established. *Haines v. Liggett Grp. Inc.*, 975 F.2d 81, 96-97 (3d Cir. 1992), as amended (Sept. 17, 1992). In practice, courts have interpreted *Haines* to require a burden-shifting process. *See, e.g., Gutter v. E.I. Dupont De Nemours*, 124 F. Supp. 2d 1291, 1307 (S.D. Fla. 2000) (explaining that the party opposing disclosure must submit evidence sufficient to rebut the prima facie showing or the privilege is lost). While the Ninth Circuit agreed that “the party seeking to preserve the privilege has the right to introduce countervailing evidence,” it clarified that it was “not convinced that in all cases it is necessary for the district court to conduct a live hearing with oral argument; in appropriate cases, the court may decide the matter on the papers.” *In re Napster, Inc. Copyright Litig.*, 479 F.3d 1078, 1093 (9th Cir. 2007).

crime-fraud exception. In *Fed. Election Comm’n v. Christian Coal.*, the court reviewed a magistrate judge’s **unsolicited** order in a subpoena enforcement action that the defendant produce certain documents withheld as privileged. The court found that, even though “it may be unusual for a court to conduct an in camera review of documents other than those specifically objected...once a court makes a determination that it will conduct an in camera review, it must be afforded a certain degree of leeway and discretion.” 178 F.R.D. 456, 462 (E.D. Va. 1998). After it submitted the purportedly privileged documents, the defendant requested “to file an ex parte explanatory declaration under seal for in camera review” to provide “an amplified explanation regarding the grounds for characterization of each document as protected by the attorney client privilege and/or the work product doctrine.” *Id.* at 263. The magistrate judge permitted this submission, which led the reviewing district court to find that allowing the defendant “multiple opportunities to be heard” satisfied the defendant’s due process rights. *Id.*

Here, the Court has provided IWA “a chance to rebut Plaintiff’s evidence” at the Feb 16th Hearing, through ex parte communications, and now through its Brief. Brief at 9. The Court’s identification of three documents that “might be relevant to Plaintiff’s fraud theory” and invitation for IWA to “respond to the Court’s tentative view by filing an appropriate ex parte pleading” (ECF No. 290) (emphasis added) was a “fair opportunity to address the Court’s concerns.” Brief at 6. If the three documents do not indicate fraud and Plaintiff’s claim is so “frivolous,” IWA has had ample opportunity to explain why. Brief at 3.

Of course, Plaintiff presently has no way of directly responding, as the contents of the three documents are known only to the Court and to IWA. But IWA does not and cannot establish that it is entitled to an ex parte hearing so it can present an argument it failed to present at the Feb. 16th Hearing or in its ex parte written submissions to the Court. Brief 9-10. The Court

asked IWA for authority to support this contention when it was first raised at the Feb. 16th Hearing, but IWA has come up empty.

B. Witness Testimony After the Feb. 16th Hearing Belies IWA's Argument that the Crime-Fraud Exception Should Not Apply

What neither the Court nor Plaintiff had available at the time of the Feb. 16th Hearing, and which ultimately renders any challenge by IWA to the application of the crime-fraud exception futile, was the compelling and ultimately damning deposition testimony of the two business principals who negotiated the transaction (David Feltman for the IWA Member of RSD and Troy Taylor for the Algon Member of RSD) and of the lawyer who represented the Algon Member in that transaction (Robert Barron, Esq., who also became RSD's mouthpiece when the Ground Lease was assigned in August 2017 and then, in March 2018, was officially retained as RSD's lawyer). As the Court (1) has already determined that Plaintiff has met the threshold showing, (2) evidently has concluded that the three documents in question satisfy the prima facie showing required under *Zolin*, and (3) has given Defendants a chance to rebut such showing, Plaintiff now provides additional evidence gathered since the Feb. 16th Hearing. The purpose of submitting this additional evidence is not to try the case in this briefing but rather to confirm that the Court is on **extremely strong grounds** in applying the crime-fraud exception.

1. The Assignment was negotiated with the intention that IWA would walk away, leaving Plaintiff to chase an empty shell once the statute of limitations ran on a fraudulent conveyance claim

IWA's corporate representative David Feltman, who was the primary architect of the RSD transaction, said out loud in the very first deposition in this case what Defendants' attorneys have been adamantly (and falsely) denying:

Q. (By Mr. Bosch) Did IWA ever develop an exit strategy that would stop monthly losses and any future liability, Mr. Feltman?

MS. DAVIS: Objection as to form.

THE WITNESS: We developed the concept together with Algon and the JV.

* * *

Q. So your understanding is that one of the reasons for assigning the ground lease for this newly formed entity, RSD, was to stop any future liability of IWA under the ground lease?

MS. DAVIS: Objection as to the form.

THE WITNESS: I would phrase it differently. I would say the effect was to stop future liability under the ground lease.

Feltman Dep. 246:8-247:10 [Danial Decl. Ex. A].⁹

The testimony from Defendants' key principals confirms that IWA had no intention of having RSD exist indefinitely (much less for the remaining term of the Ground Lease, if necessary). IWA was only looking to get past the statute of limitations ("SOL") on a fraudulent transfer claim. The formation of RSD was a sham transaction to give IWA leverage over Plaintiff after the SOL expired by leaving Plaintiff with an undercapitalized single-purpose entity to chase for ground rent that RSD had no independent ability to pay without "voluntary" funding from IWA.

For example, IWA's Mr. Feltman was focused on trying to get past the SOL on a fraudulent conveyance claim, at which point IWA could "force" a sale or consider alternative exit strategies:

Q. (By Mr. Bosch) At any time, had there been discussions about the statute of limitations on a fraudulent transfer claim?

A. I believe so.

Q. What do you understand the term statute of limitations to mean?

A. The period of time following a transfer when a claim can be made as to a fraudulent transfer.

* * *

⁹ Citations in the form "Danial Decl. ___" are to the accompanying declaration of Katherine T. Danial.

Q. Do you recall having any discussions with Mr. Taylor about the statute of limitations?

A. Probably.

Q. Why would you probably have discussed the statute of limitations with Mr. Taylor on a fraudulent conveyance claim?

A. Because if I was -- if we were having a discussion about fraudulent conveyance, we probably would have had also a discussion about the statute of limitations. But I don't recall that specifically.

Q. Did you keep notes of your discussions with Mr. Taylor?

A. I don't think so.

Q. Do you recall, as you sit here today, what period of time the statute of limitations is for a fraudulent conveyance claim?

A. No.

Q. Did you, at any point, know the statute of limitations period for a fraudulent conveyance claim?

A. I have a vague recollection. 36 months, 3 years.

Feltman Dep. 360:16-363:15 [Danial Decl. Ex. A]. On the Algon side of the transaction, attorney Robert Barron confirmed that when he initially heard Mr. Feltman outline the structure and purpose of the transaction, it was clear that IWA was looking for an exit and needed to get past the SOL:

Q. All right. You understood from the beginning, based on your initial conversation with Mr. Feltman, that IWA's objective, in forming this new entity and assigning the ground lease to the new entity was to get IWA off the hook?

MS. KROPF: Objection as to form.

THE WITNESS: That was part of the mission.

That was part of the plan, because -- based upon the terms of the lease. The other part of the plan was the reason why Algon was involved, was the hope that the landlord would negotiate at some point with the tenant, and they would actually make it economically viable.

Because they were in the business to make money. So if you could make the asset economically viable,

that's why Algon was involved as people that have done that in the past.

...

Q. So, Mr. Barron, do you recall there being any discussion as to when Algon would begin having these discussions with the landlord?

A. I knew there was a -- there was a discussion of a delay, to delay negotiations for a time period.

Q. Do you recall what that time period was?

A. I went back and looked at the documents. I think the term sheet had something like 36 months or 38 months. It was some "month" time period.

Q. Do you recall there being any discussion as to why Mr. Feltman and IWA wanted to delay Algon from having discussions with the landlord for 36 months or so?

MS. KROPF: Objection as to form.

THE WITNESS: My understanding was a combination of the lack -- severe lack of trust with the landlord based upon this other litigation, concern that the landlord would not honor the terms of the lease. And so the concept of getting beyond the time period for -- to try to attack the agreement based upon transfer.

Barron Dep. 64:2-66:12 [Danial Decl. Ex. B].

2. IWA, through RSD, intended to hinder, delay, or frustrate Plaintiff's rights under the Ground Lease

Mr. Feltman's testimony indicates that once Defendants got past the SOL, they were planning to put the screws to the landlord, perhaps by having RSD (which IWA controls and funds at its discretion) walk away, as an IWA affiliate (Transamerica) had done at the 6610 Rockledge Drive property owned by a Camalier-family affiliate:

Q. And if you didn't get it done in three years, then what?

A. Then we would have the opportunity to revisit the arrangement.

Q. And what does that mean?

A. Well, it means either force the sale of the property or find some other exit plan for the property.

Feltman Dep. 373:21-374:6 [Danial Decl. Ex. A].

On the Algon side of the transaction, Attorney Robert Barron's testimony confirms that "walking away" or "giving back" the Ground Lease was contemplated from the very beginning of the RSD transaction:

Q. Was there any discussion of what would happen if the market didn't turn and if the landlord did not agree to modify the terms of the ground lease?

A. Not in great detail. But I think at some point, there may be a situation where we have to give back the interest to the landlord, which is frankly what the prior tenant, the Camalier entity did when they were tenant.

Q. What do you mean by "give back the interest to the landlord"?

A. You basically say that we can't make this a going concern -- I don't know. Whatever -- it's the same thing that the Camalier tenant did on the original loan, that they -- they couldn't make a go of it. They defaulted, and they gave back the interest through foreclosure. They would -- they would, I assume, talk to the landlord and say, it's not working. You are not renegotiating. The market is not turning, so tell us what you want to do with your interest.

Q. I want to understand more of what you mean by giving it back to the landlord. I don't understand that. Can you explain what that, what -- how -- as a sophisticated lawyer, what does that mean to give the ground lease interest back to the landlord?

A. Yeah. So -- well, I mean, you're sophisticated. Your client did this in connection with the predecessor to the lender; right? It was a joint venture between the Camaliers and -- it's written down here. It's Lockheed Martin. Lockheed Martin and the Camaliers were joint ventures as the tenant. They borrowed money, and they were unable to make it work for whatever reason. And they effectively gave back the interest. And now the landlord didn't take it back, because I guess it was encumbered by a mortgage. So the lender foreclosed it. So here we have a situation where it's free and clear. There's no third-party mortgage. So

if there's no third-party mortgage, the tenant would say, landlord, if you're not going to renegotiate and we cannot find tenants, we need to negotiate a -- an orderly turning over the keys. I mean, that's just -- that's one of the options in a workout situation when the parties can't reach a win-win situation.

Q. Meaning that ground lease tenant would walk away from its obligations under the ground lease?

A. Correct. Or the landlord could get a judgment against the entity. They could sue in court and get a judgment against the entity.

Barron Dep. 79:21-82:9 [Danial Decl. Ex. B].

3. Key parts of the exit strategy were designed to keep Plaintiff in the dark about the assignment until the SOL had run.

The witnesses confirmed that there were several terms of the transaction that were driven by the objective of getting past the SOL. For example, IWA's Mr. Feltman specifically contemplated that the new entity (RSD) would make no efforts to sell the ground lease interest until they got past the SOL:

Q. Directing your attention to paragraph 4D, which is the disposition agreement. You see there, there was an insertion for after 38 months if the Algon member opts to sell the property?

A. Yes.

* * * * *

Q. And do you know how 38 months was determined as the appropriate period of time for Algon to consider a disposition?

A. I think at that point, the litigation risk would go away because we'd be beyond the fraudulent transfer date, and also our expectation was that there would be leasing activity, and by then the property would be in a position to be sold.

Feltman Dep. 406:7-22 (emphasis added) [Danial Decl. Ex. A]. This is also the reason why no one from IWA's new sham entity (RSD) would be allowed to even communicate with Plaintiff:

Q. (By Mr. Bosch) Why not have Algon communicate with the landlord on behalf of RSD for three years?

MS. DAVIS: Objection as to form.

MS. KROPF: Misstate -- well, misstates the facts.

THE WITNESS: One, we knew there was this risk of a fraudulent transfer claim.

Q. (By Mr. Bosch) And so why would communicating between Algon and landlord give rise or increase the risk of a fraudulent transfer?

A. I was concerned that Algon might disclose things to the landlord that we didn't think the landlord needed -- information the landlord didn't need and wasn't entitled to.

Q. All right. So what was the consideration? What was it that Algon might say to the landlord that you thought the landlord had no right to know that could give rise to a fraudulent transfer claim?

THE WITNESS: Mostly surrounding Algon to disclose, for example, IWA's interest in the Partnership.

MS. DAVIS: Objection as to form. Misstates evidence.

Q. (By Mr. Bosch) That was one of the considerations?

A. And other factors.

Q. Yeah, so one of -- one of the factors for restricting Algon's discussions with the landlord, is you were concerned that Algon would disclose IWA's interest in RSD, correct?

MS. DAVIS: Objection as to form. Misstates evidence.

THE WITNESS: A factor, yes.

Q. (By Mr. Bosch) And another factor was you were concerned that Algon would disclose the capitalization of RSD?

A. Yes.

Q. Which was limited to \$3.9 million?

A. Yes. In a short capitalization, yes.

Feltman Dep. 384:15-387:20 [Danial Decl. Ex. A].

The testimony of the two Algon business principals (Troy Taylor and Paul Rubin), who David Feltman brought in to execute on his exit strategy, confirms that IWA drove the transaction and that Defendants had no expectation that they would need to do anything for the first three years while the SOL ran; their 'expertise' as restructuring professionals would not

become relevant until they got past the three-year SOL – and then would be used only to permit Defendants to walk away from the Ground Lease, not to exert bona fide efforts to perform. *See* Taylor Dep. 177-180; 281-284 [Danial Decl. Ex. C].

4. The lawyers clearly were involved in structuring this fraudulent conveyance

The lawyers were directly and materially involved in structuring and executing on this fraudulent conveyance, and thus there is now even more than ample evidence to support application of the crime-fraud exception. Mr. Feltman's testimony confirms that Defendants' in-house and outside counsel not only were aware of but actively participated in formulating and executing the fraudulent conveyance:

Q: And do you recall there being any discussion among the business principals involved in making decisions for IWA's interest with respect to what they needed to avoid in connection with pursuing a transaction over this – for this ground lease to avoid a fraudulent conveyance claim?

A. Discussion with outside counsel and in-house counsel, but I don't recall any discussion among the business people.

Feltman Dep. 293:4-12 [Danial Decl. Ex. A].

Mr. Barron confirmed that IWA's in-house counsel, Gregg Snitker, was involved in discussing and planning this exit strategy:

Q. But who raised this possibility of walking away if the ground lease was not modified or if the market didn't improve?

A. Well, it's just logic. I don't remember if there's a -- you know, if there's a who, but that's the options when you go forward in a distressed asset.

Q. Yes, I understand. But you said that there were conversations, and I want to know who participated in those conversations.

MS. KROPF: And I'll caution you if they are conversations with your clients, then you should not reveal them. But if they're conversations with Mr.

Feltman or IWA or somebody else, you can talk about them.

THE WITNESS: I don't -- I don't recall conversations -- it would be really with Mr. Snitker -- on long-term, at the end of the day.

Barron Dep. 83:2-21 [Danial Decl. Ex. B].

Algon's Troy Taylor confirmed that his lawyers (Robert Barron and Jori Guso) were directly involved in negotiating the term sheets with IWA that included not only restrictions on communications and funding but also contemplated "burying the entity" (RSD) before it was even formed.¹⁰ When asked why RSD did not record the assignment, which is evidence of Defendants' fraudulent intent, Mr. Taylor and Mr. Rubin hid behind privilege (and their counsel's instructions not to answer).¹¹

Even the decision to have Attorney Robert Barron serve as the mouthpiece for RSD after the assignment was directed by IWA's in-house counsel Mr. Snitker, who evidently wanted to

¹⁰ **Q.** All right. And do you see the term there, "How do we bury the entity?"

A. Uh-huh.

Q. Yes?

A. Yes. Yes, sir.

Q. What does that meant to you?

A. I think the -- what I -- in our terminology, we'd use that to mean what do we do at the end of the day if it doesn't work out. You know, if we can't lease it out, if the landlord will not negotiate, how do we resolve this?

Q. And why were you considering burying the entity before the entity was even formed?

Ms. Kropf: so objection to the extent that gets to this conversations with his clients about what they were doing on their side. If you want to talk about IWA requirement negotiations, that's fine. But to the extent you're asking about his communications with his we object on privilege grounds.

Barron Dep. 202:2-203:1 [Danial Decl. Ex. B].

¹¹ Plaintiff refers to and incorporates herein its Reply to RSD's Letter to the Court (ECF No. 303), which lays out several of RSD Counsel's improper instructions.

control the disclosure of information about IWA's involvement until the SOL ran. As Mr. Barron testified:

Q. All right. And is it your understanding that the only reason you were identified as the person to whom questions should be directed is because you were going to be the lawyer for RSD?

A. Well, I was the lawyer for the managing member. Managing member runs the entity. So I was – at that point, I was lawyer for the managing member. And I would also be legal counsel for our company – our Firm, of the legal entity itself.

Q. Who decided that you would be the person to whom questions should be directed?

A. I believe it was probably Snitker.

Q. Gregg Snitker, the in-house counsel for IWA?

A. Correct.

Barron Dep. 239:5-21 [Danial Decl. Ex. B].

When asked why RSD never responded to the Landlord's inquiries concerning the names of RSD's principals and its wherewithal to satisfy Tenant's financial obligations under the Ground Lease, and not once responded favorably to Landlord's repeated requests to meet with RSD's business principals, RSD and attorney Robert Barron hid behind privilege:¹²

Q. On August 30, 2017, as the person to whom questions were to be directed, what did you understand you were authorized to disclose?

Ms. Kropf: Let me just – Mr. Bosch, I'm sorry to be frustrating here, but I need to interpose an objection. Because he's stated repeatedly that he's the lawyer for the entity who can only be authorized by his clients. And to the extent any authority

¹² The only non-privileged explanation given is that Landlord reached out through a litigator. Obviously prepped to offer this "excuse," Defendants are seemingly oblivious to the fact that RSD knew how to contact Mr. Camalier, but Mr. Camalier's only point of contact with RSD up to the date this lawsuit was filed almost three (3) years after the Assignment was a lawyer (Mr. Barron). Defendants' refusal to allow Mr. Barron to provide any substantive testimony on the facts (and factual omissions) in his correspondence on behalf of RSD will be addressed in a forthcoming motion, as anticipated by the Court. *See* April 13, 2023, Order, ECF No. 309.

comes from your clients, I instruct you not to answer.

The Witness: Okay.

Ms. Kropf: Whoever the client is, that would be privileged. We'd object to it. And I instruct you not to answer.

The Witness: Okay. Thank you.

Mr. Bosch: So were you advised by your client as to what information you could disclose?

Mr. Kropf: Objection. And I instruct you not to answer.

The Witness: Understood.

Mr. Bosch: So you can't say what information you were permitted to disclose or were not permitted to disclose without you divulging attorney-client communications?

Ms. Kropf: You can – object to form. You can answer.

The Witness: I don't know how I could

Ms. Kropf: Yes. Object to form. You can answer.

The Witness: I don't know to answer that question without discussing communication with my client.

Mr. Bosch: And Ms. Kropf, so it's clear, you're saying all communications with his client about the information that he could or could not disclose is privileged?

Ms. Kropf: Yes.

Barron Dep. 247:16-249:14 [Danial Decl. Ex. B].

5. The reason Defendants are hiding behind privilege is because there was never any intention for RSD to honor the Tenant's long-term obligations under the Ground Lease

The reason Defendant's witnesses are all hiding behind privilege is obvious from the terms of the RSD Operating Agreement, which reveal that the parties to that agreement never intended that RSD would continue to keep, perform, and observe all of Tenant's obligations for the remaining term of the Ground Lease. Indeed, they had already agreed to dissolve the entity no later than nine (9) years after its formation if the exit strategy failed (or even sooner if IWA so elected as the 98% member). RSD attorney Robert Barron confirmed that at the time of

formation, the parties not only contemplated but contracted to leave the landlord high and dry by no later than August 1, 2026, with more than six decades left on the Ground Lease:

Q. Mr. Barron, I want to go back to the discussions you recall having with IWA concerning what to do if RSD, this Newco, could not lease up the property or get the landlord to modify the terms of the ground lease. Do you recall that discussion we had earlier?

A. Yes, sir.

Q. You talked about the possibility of walking away from the ground lease. Do you recall that?

A. Yes.

Q. And you recall also, you refer to that as maybe giving back the ground lease to the landlord?

A. Yes.

Q. By which you meant that the landlord would have nobody to look to for the payment of rent?

A. Or they would get a judgement against the – RSD.

Barron Dep. 212:4-213:1 [Danial Decl. Ex. B].

Q. All right. Well, let's go back to the operating agreement that you negotiated.

A. Uh-huh.

Q. Just scroll down to page 33. There we go. Right there. Do you see Article 10?

A. Yes.

Q. So at the time of its formation, RSD contemplated dissolving and winding up just under nine years after the date of the assignment, did it not?

A. That was the earliest date, yes. Yes.

Q. So this was an entity that already contemplated its dissolution at the time of its formation; isn't that right?

A. It contemplated a date that it would be dissolved.

Q. Right. Which was just nine years after the date of its formation; right?

A. I haven't counted the years, but, it's, what -- yeah, nine years.

Barron Dep. 215:4-216:17 [Danial Decl. Ex. B].

Q: All right. So that's not my question. You recall under the assignment provision – under the assignment, the assignee agreed to keep, perform, and observe all of the terms, conditions of the ground lease, do you not?

A. I do.

Q. And yet here, as of the date of the formation of that assignee, it already contemplated it would be dissolved years before the ground lease expired; isn't that right?

A. That's correct.

Barron Dep. 217:7 – 217:17 [Danial Decl. Ex. B].

Q. Right. So let's say after the dissolution event, when the company is wound up, after the winding-up process, what happens to the company's ability to keep, observe and perform the tenant's obligations under the ground lease?

A. At that point, they would be turning the keys over to the landlord.

Barron Dep. 219:14 – 219:20 (emphasis added) [Danial Decl. Ex. B].

IWA can no longer deny what happened, what the documents show, and what the testimony proves – that the attorneys were directly involved in the initial creation and perpetuation of the fraudulent scheme to assign the Ground Lease to RSD so that Plaintiff would have nothing to chase but a shell when (inevitably) IWA decided not to continue to fund this “worthless” Ground Lease interest. There is no other plausible explanation for why, even now, IWA refuses to commit to fund RSD for as long as necessary for RSD to become self-sufficient. The evidence demonstrates that it was never anticipated or intended that RSD **independently** would be able to fulfill Tenant's obligations under the Ground Lease. Accordingly, the crime-fraud exception applies, not just plausibly but compellingly.

C. The Court has Discretion to Order the Three Documents to be Released

The Court has broad and well-established discretion to determine how and when any documents are released. *See Ardrey v. United Parcel Service*, 798 F.2d 679, 682 (4th Cir. 1986) (“The latitude given the district court extends as well to the manner in which it orders the course and scope of discovery.”). Despite this settled law, IWA complains about the “prejudice” that will occur if the Court releases on its own the three documents it has identified from its in camera inspection, arguing that “placing such communication in the hands of Plaintiff would be highly prejudicial to Defendants, and would do irreparable harm,” and that the Court is “stripping IWA of its attorney-client privilege.” Brief at 5. IWA’s efforts to sway the Court’s approach to disclosure has no legal support – prejudice cannot be a basis for gutting the crime-fraud exception, *especially* where that prejudice arises because the documents tend to substantiate Plaintiff’s allegations of fraud.

On the record before this Court, IWA’s threatened challenge is futile. The Fourth Circuit has already established that a district court’s determination that there is a *prima facie* basis for applying the crime fraud exception will be upheld “absent a clear showing of abuse of discretion.” *In re Grand Jury Proceedings #5*, 401 F.3d at 254. Weighing prejudice is an evidentiary consideration for trial, not a consideration where, as here, the Court is determining if these documents should be disclosed in discovery. Furthermore, IWA’s assertion that the Court would “strip” IWA of the attorney-client privilege by disclosing the three documents also manifests a misapprehension of the law; under the crime-fraud exception, the privilege never existed. *See In re Grand Jury Subpoena*, 884 F.2d 124, 127 (4th Cir.1989) (“The crime-fraud exception to the attorney-client privilege provides that a client’s communications with an attorney will not be privileged if made for the purpose of committing or furthering a crime or

fraud.”). Plaintiff is entitled to these documents because they are not privileged and should have been produced in discovery.¹³

Once the Court determines that documents withheld on privilege grounds are subject to the crime fraud exception, it is also squarely within the Court’s discretion to determine how and when the three documents are disclosed to Plaintiff. *See Rowland v. Am. Gen. Fin., Inc.*, 340 F.3d 187, 195 (4th Cir. 2003) (recognizing the court’s “wide latitude in controlling discovery and ... its rulings will not be overturned absent a showing of clear abuse of discretion.”); *ContraVest Inc. v. Mt. Hawley Ins. Co.*, No. 20-1915, 2021 WL 4782687, at *3 (4th Cir. Oct. 13, 2021). While IWA may not like the outcome, its continued cries of prejudice at the pre-trial stage cannot and should not limit the Court’s “wide latitude in controlling discovery.” *See Rowland*, 340 F.3d at 195.

D. Any Relief Sought by IWA From the Court’s Order Should Occur within a Reasonable Time

This lawsuit has been in the throes of protracted discovery for over two and a half years, and it is in the interest of everyone to continue moving this case toward final resolution. If IWA chooses to appeal an Order to release the three documents, it should do so promptly.

The United States Supreme Court has made it abundantly clear that “collateral order appeals are not necessary to ensure effective review of orders adverse to the attorney-client privilege.” *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 108 (2009). The Supreme Court explained that “[p]ermitt[ing] piecemeal, prejudgment appeals . . . undermines efficient judicial administration and encroaches upon the prerogatives of district court judges, who play a special role in managing ongoing litigation.” *Id.* at 106. Nor is there any genuine concern here that

¹³ Plaintiff’s access to the relevant documents also is essential to the parties’ ability to fully and fairly brief the issue to the Court of Appeals if that is how Defendants elect to proceed.

disclosure would have a chilling effect on attorney-client communications, as the *Mohawk* Court noted that “in deciding how freely to speak, clients and counsel are unlikely to focus on the remote prospect of an erroneous disclosure order, let alone on the timing of a possible appeal.” *Id.* at 110.

Consistent with this binding precedent, IWA has two options if it wishes to avoid facing sanctions and being held in contempt if faced with an order to disclose the three documents: it may seek permission to file an interlocutory appeal pursuant to 28 U.S.C. § 1292(b); or it may seek mandamus review. *Id.* at 110-111. Either path is likely futile, but it is IWA’s decision to make.

In an effort to maintain the current schedule, Plaintiff respectfully requests that if the Court decides to release the documents, whether it does so directly or orders IWA to do so, that its order should also direct IWA – if it so chooses – to pursue a stay and seek relief within ten (10) calendar days of the Court’s order. While Plaintiff is confident that the Court’s crime-fraud application is proper, IWA’s stated desire to challenge any such determination should not be allowed to delay the lawsuit unnecessarily.

III. CONCLUSION

For the above reasons, and without waiving the right to seek additional disclosures of documents under the crime-fraud exception, Plaintiff respectfully requests that the Court deny IWA’s untimely request for reconsideration and order the disclosure of the three documents identified during the Court’s in camera inspection under the crime-fraud exception.

Dated: April 18, 2023

Respectfully submitted,

/s/ William M. Bosch

William Bosch

Anthony Cavanaugh

Alvin Dunn

Katherine Danial

Pillsbury Winthrop Shaw Pittman LLP

1200 Seventeenth Street NW

Washington, DC 20036

Telephone: 202-663-8000

Facsimile: 202-663-8007

william.bosch@pillsburylaw.com

alvin.dunn@pillsburylaw.com

katherine.danial@pillsburylaw.com

*Attorneys for Plaintiff Rock Spring Plaza II,
LLC*

CERTIFICATE OF SERVICE

I hereby certify that on April 18, 2023, I caused a copy of the foregoing Plaintiff Rock Spring Plaza II, LLC's Response in Opposition to Defendant Investor's Warranty of America, LLC's Brief Seeking Reconsideration of the Applicability of the Crime-Fraud Exception to be served via email on all counsel of record.

Respectfully submitted,

Katherine T. Danial

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ROCK SPRING PLAZA II, LLC

Plaintiff,

– v. –

INVESTORS WARRANTY OF
AMERICA, LLC, *et al*,

Defendants.

Case No. 8:20-cv-01502-PJM

DECLARATION OF KATHERINE T. DANIAL

I, Katherine T. Danial, do hereby state under oath that I am over eighteen years of age and that I have personal knowledge of, and am competent to testify to, the following:


1. I am senior associate with the law firm Pillsbury Winthrop Shaw Pittman LLP. My principal office is located at 1200 Seventeenth Street NW, Washington, DC 20036.
2. I am a counsel of record for Plaintiff Rock Spring Plaza II, LLC in the above-styled action.
3. Attached hereto as **Exhibit A** are excerpts from a true and correct copy of the deposition transcript of David Feltman, Investors Warranty of America, LLC’s (“IWA”) corporate designee, taken on March 16, 2023, and March 17, 2023, in the above-styled action. Subject to review and signature, **Exhibit A** includes excerpts from a certified reporter transcript.
4. Attached hereto as **Exhibit B** are excerpts from a true and correct copy of the deposition transcript of Robert Barron taken on April 14, 2023, in the above-styled action. Subject to review and signature, **Exhibit B** includes excerpts from a certified reporter transcript.
5. Attached hereto as **Exhibit C** are excerpts from a true and correct copy of the deposition transcript of Troy Taylor, one of Rock Springs Drive LLC’s (“RSD”) corporate

designees, taken on April 6, 2023, in the above-styled action. Subject to review and signature, **Exhibit C** includes excerpts from a certified reporter transcript.

OATH

I SOLEMNLY AFFIRM under the penalties of perjury and upon personal knowledge that the contents of the foregoing Declaration are true and correct to the best of my knowledge, information and belief.

Executed this 18th day of April, 2023.

A handwritten signature in cursive script that reads "Katherine Danial".

Katherine Danial

EXHIBIT A



Planet Depos®
We Make It *Happen™*

Transcript of David Feltman, Designated Representative, Volume 1

Date: March 16, 2023

Case: Rock Spring Plaza II LLC -v- Investors Warranty of America LLC, et al.

Planet Depos

Phone: 888.433.3767

Email: transcripts@planetdepos.com

www.planetdepos.com

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ROCK SPRING PLAZA, II,

Plaintiff,

VS.

INVESTORS WARRANTY OF
AMERICA, LLC, et al.,

Defendants.

[illegible]

CIVIL ACTION FILE
NO. 8:20-CV-01502-PJM

VIDEOTAPED 30 (b) (6) DEPOSITION OF
INVESTORS WARRANTY OF AMERICA, LLC
Represented by: DAVID FELTMAN

March 10, 2023
9:00 a.m.

1075 Peachtree Street, NE
Suite 2500
Atlanta, Georgia

Lamarra George, CCR-2582

Transcript of David Feltman, Designated Representative, Volume 1

Conducted on March 16, 2023

2

1 APPEARANCES OF COUNSEL
On behalf of the Plaintiff:
2 ROCK SPRING PLAZA, II
3 WILLIAM M. BOSCH, ESQ.
KATHERINE DANIAL
4 Pillsbury Winthrop Shaw Pittman, LLP
1200 Seventeenth Street, NW
5 Washington, DC 20036-3006
202-663-8000
6 William.bosch@pillsburylaw.com
Katherine.danial@pillsburylaw.com
On behalf of the Defendant:
7 INVESTORS WARRANTY OF AMERICA, LLC
8 REBECCA A. DAVIS, ESQ.
Seyfarth Shaw, LLP
9 1075 Peachtree Street, NE
Suite 2500
10 Atlanta, Georgia 30309
404-888-1874
11 Rdavis@seyfarth.com
12 On behalf of the Defendant:
ROCK SPRINGS DRIVE, LLC
13 SARA KROPF, ESQ.
14 Kropf Moseley
1100 H Street, NW
15 Suite 1220
Washington, DC 20005
16 202-627-6900
Sara@kmlawfirm.com
17
18 Also Present:
19 Emily Dunn, Videographer
20 Troy Taylor, Algon Group
21 Paul Rubin, Rock Springs Drive, LLC
(Via Telephone)
22

Transcript of David Feltman, Designated Representative, Volume 1

Conducted on March 16, 2023

6

1 VIDEOGRAPHER: Here begins Media
2 No. 1 in the videotaped deposition of David
3 Feltman in the matter of Rock Spring Plaza,
4 II, LLC, vs. Investors Warranty of America,
5 LLC, et al., in the United States District
6 Court for the District of Maryland, Case
7 No. 20-CV-01502 PJM. Today's date is
8 3/16/23, and the time on the video monitor
9 is 9:03 a.m., Eastern Standard. The
10 videographer today is Emily Dunn
11 representing Planet Depos.

12 This video deposition is taking
13 place at 1075 Peachtree Street, NE, Suite
14 2500, Atlanta, Georgia 30309.

15 Would counsel please voice identify
16 themselves and state whom they represent.

17 MR. BOSCH: William Bosch from the
18 law firm of Pillsbury Winthrop Shaw
19 Pittman, on behalf of the plaintiff.

20 MS. DANIAL: Katherine Danial with
21 Pillsbury Winthrop Shaw Pittman, on behalf
22 of the plaintiff.

Transcript of David Feltman, Designated Representative, Volume 1

Conducted on March 16, 2023

7

1 MS. DAVIS: Rebecca Davis with
2 Seyfarth Shaw, LLP, on behalf of Investors
3 Warranty of America, LLC.

4 MS. KROPF: And Sara Kropf from
5 Kropf Moseley, on behalf of Rock Springs
6 Drive, LLC.

7 MR. BOSCH: Can we also identify
8 that Mr. Rubin is on, as well?

9 MS. KROPF: And on the phone is Paul
10 Rubin, who's one of the principals of Rock
11 Springs Drive.

12 VIDEOGRAPHER: The court reporter
13 today is Lamarra George, representing
14 Planet Depos. Would the court reporter
15 please swear in the witness?

16 DAVID FELTMAN,
17 having been first duly sworn, was examined and
18 testified as follows:

19 EXAMINATION

20 By Mr. Bosch:

21 Q. Good morning, sir. Would you please state
22 your full name?

Transcript of David Feltman, Designated Representative, Volume 1

Conducted on March 16, 2023

246

1 the video record. The time is 3:00 p.m.

2 Q. (By Mr. Bosch) Did IWA ever develop an
3 exit strategy that would stop monthly losses and any
4 future liability, Mr. Feltman?

5 MS. DAVIS: Objection as to form.

6 THE WITNESS: We developed the
7 concept together with Algon and the JV.

8 Q. (By Mr. Bosch) And was that a concept to
9 stop monthly losses of any future liability?

10 A. Not specifically, no.

11 Q. Is that one of the effects of that JV?

12 A. I think under the operating agreement, IWA
13 funded the JV. So from a standpoint of monthly
14 losses, I think the answer is no. And I can't really
15 speak to future liability.

16 Q. Why is that?

17 A. Well, I guess, the lease, the ground lease
18 and the estoppel agreement clearly indicate that a
19 transfer by the tenant of the tenant under the ground
20 lease, the liability for the -- for IWA, under the
21 ground lease, stops when they transfer -- they assign
22 the ground lease to another party.

Transcript of David Feltman, Designated Representative, Volume 1

Conducted on March 16, 2023

247

1 Q. So your understanding is that one of the
2 reasons for assigning the ground lease for this newly
3 formed entity, RSD, was to stop any future liability
4 of IWA under the ground lease?

5 MS. DAVIS: Objection as to the
6 form.

7 THE WITNESS: I would phrase it
8 differently. I would say the effect was to
9 stop future liability under the ground
10 lease.

11 Q. (By Mr. Bosch) And that was part of the
12 exit strategy?

13 MS. DAVIS: Objection as to form.

14 THE WITNESS: No. The exit strategy
15 was to bring in a qualified partner to turn
16 around the property.

17 Q. (By Mr. Bosch) And the effect was to stop
18 future liability for IWA under the ground lease?

19 A. I believe that's right.

20 Q. And what's the basis for that
21 understanding?

22 A. The language of the ground lease and the

Transcript of David Feltman, Designated Representative, Volume 1

Conducted on March 16, 2023

293

1 Q. So all -- your understanding is it's a
2 complex legal issue?

3 A. Yes.

4 Q. And do you recall there being any
5 discussion among the business principals involved in
6 making decisions for IWA's interest with respect to
7 what they needed to avoid in connection with pursuing
8 a transaction over this -- for this ground lease to
9 avoid a fraudulent conveyance claim?

10 A. Discussion with outside counsel and
11 in-house counsel, but I don't recall any discussion
12 among the business people.

13 Q. I'll hand you now what I'll mark as
14 Exhibit 28. This is a series of e-mail exchanges
15 bearing Bates No. IWA3137.

16 (Exhibit No. 28 was marked for
17 identification.)

18 Q. (By Mr. Bosch) And this is a continuation
19 of the e-mail chain we were just looking at in IWA
20 27. You see at the bottom of the first page, this is
21 where you say, We confirm the appraisal will come in
22 at minus \$3 million?

Transcript of David Feltman, Designated Representative, Volume 1

Conducted on March 16, 2023

360

1 There was no existing fraudulent transfer risk at
2 that time.

3 Q. Right. But there was -- there was a risk
4 if they engaged in a transfer of the ground lease
5 interest.

6 A. I was aware of that, yes.

7 Q. And that was a risk of a fraudulent
8 conveyance or fraudulent transfer claim?

9 A. I was aware that was a risk.

10 Q. And so, also at -- in or around
11 January 2017, IWA knew that forming an SPE to take a
12 transfer of IWA's interest in the ground lease might
13 give rise to a fraudulent transfer claim?

14 MS. DAVIS: Objection as to form.

15 THE WITNESS: Claim, yes.

16 Q. (By Mr. Bosch) At any time, had there been
17 discussions about the statute of limitations on a
18 fraudulent transfer claim?

19 A. I believe so.

20 Q. What do you understand the term statute of
21 limitations to mean?

22 A. The period of time following a transfer

Transcript of David Feltman, Designated Representative, Volume 1

Conducted on March 16, 2023

361

1 when a claim can be made as to a fraudulent transfer.

2 Q. When do you recall there being discussion
3 about a statute of limitations -- the statute of
4 limitations on a fraudulent transfer claim?

5 A. I don't recall specifically, but I'm sure
6 there was when we had a discussion with counsel or
7 advice from counsel about the fraudulent transfer
8 issue -- sorry I'm getting into --

9 MS. DAVIS: You're getting -- yeah.

10 THE WITNESS: Sorry.

11 MS. DAVIS: You can answer the
12 question, but don't discuss privileged
13 information --

14 THE WITNESS: Right.

15 MS. DAVIS: -- or advice of counsel.

16 Q. (By Mr. Bosch) Yeah, so I'm not asking
17 what the advice was, I'm asking when did you receive
18 this advice about the statute of limitation --

19 A. I don't recall when.

20 Q. Sorry, sir, let me just finish the
21 question.

22 A. Sorry.

Transcript of David Feltman, Designated Representative, Volume 1

Conducted on March 16, 2023

362

1 Q. When did you receive this advice on the
2 statute of limitations on a fraudulent transfer
3 claim?

4 A. I don't recall.

5 Q. It was before January 2017?

6 A. I believe so.

7 Q. You just don't recall as you sit here
8 today how much before that -- before January 2017?

9 A. Correct.

10 Q. And you don't recall the specific context
11 in which the statute out of limitations was
12 discussed?

13 A. Correct.

14 Q. Do you recall having any discussions with
15 Mr. Taylor about the statute of limitations?

16 A. Probably.

17 Q. And you say "probably." Do you have any
18 specific recollection?

19 A. No.

20 Q. Why would you probably have discussed the
21 statute of limitations with Mr. Taylor on a
22 fraudulent conveyance claim?

Transcript of David Feltman, Designated Representative, Volume 1

Conducted on March 16, 2023

363

1 A. Because if I was -- if we were having a
2 discussion about fraudulent conveyance, we probably
3 would have had also a discussion about the statute of
4 limitations. But I don't recall that specifically.

5 Q. Did you keep notes of your discussions
6 with Mr. Taylor?

7 A. I don't think so.

8 Q. Do you recall, as you sit here today, what
9 period of time the statute of limitations is for a
10 fraudulent conveyance claim?

11 A. No.

12 Q. Did you, at any point, know the statute of
13 limitations period for a fraudulent conveyance claim?

14 A. I have a vague recollection. 36 months,
15 3 years.

16 Q. And -- so, that recollection would be
17 consistent with what you probably discussed with
18 Mr. Taylor?

19 MS. DAVIS: Objection to form.

20 Q. (By Mr. Bosch) 36 months, statute of
21 limitations.

22 MS. DAVIS: Objection as to form.

Transcript of David Feltman, Designated Representative, Volume 1

Conducted on March 16, 2023

373

1 that's what happened. And probably because it was
2 considered unnecessary.

3 Q. It was unnecessary to create a single
4 purpose LLC affiliate of IWA to be a non-managing
5 member of New Co?

6 A. Yeah, but I'd like to review the operating
7 agreement to be sure that's not where we ended up.

8 Q. Okay. We'll get to it.

9 A. Okay.

10 Q. The partnership term, do you see that it
11 says three years?

12 A. Yes.

13 Q. Why that period of time?

14 A. I think we felt initially that that was
15 sufficient time to get the property leased up.

16 Q. On what basis?

17 A. Just our thoughts about if we didn't get
18 it done in three years, were we going to get it done.
19 It was just -- I think for the purposes of this, it
20 was just to pick a term.

21 Q. And if you didn't get it done in three
22 years, then what?

Transcript of David Feltman, Designated Representative, Volume 1

Conducted on March 16, 2023

374

1 A. Then we would have the opportunity to
2 revisit the arrangement.

3 Q. And what does that mean?

4 A. Well, it means either force the sale of
5 the property or find some other exit plan for the
6 property.

7 Q. And when you say "force the sale," what
8 does that mean?

9 A. Meaning, sell the property even -- even if
10 it hadn't been leased. But there was a -- yeah, go
11 ahead. I'm sorry.

12 Q. IWA had already held the ground lease for
13 five years at that point; is that right?

14 A. Yes.

15 Q. So on what basis did you conclude it would
16 only take three years to lease it up?

17 A. We expected Algon to be more successful.

18 Q. And did Algon give you any reason to
19 believe that they could be more successful?

20 A. Well, we discussed -- yeah.

21 Q. Did they give you a leasing plan?

22 A. Not specifically, no.

Transcript of David Feltman, Designated Representative, Volume 1

Conducted on March 16, 2023

384

1 Q. Right. And so is there any reason not to
2 allow -- why you would not want Algon to communicate
3 with the landlord about the terms of the ground
4 lease?

5 A. If there was a conversation about
6 modifying the ground lease, it would have to involve
7 a conversation about leasing. And we didn't want to
8 disclose any leasing issues to the ground lessor
9 because they were a competitor in the market. And
10 two, we were in litigation with the Camaliers, and we
11 did not have a good relationship, a relationship on
12 which a fruitful discussion could be held.

13 Q. So why three years?

14 MS. KROPF: Objection as to form.

15 Q. (By Mr. Bosch) Why not have Algon
16 communicate with the landlord on behalf of RSD for
17 three years?

18 MS. DAVIS: Objection as to form.

19 MS. KROPF: Misstate -- well,
20 misstates the facts.

21 THE WITNESS: One, we knew there was
22 this risk of a fraudulent transfer claim.

Transcript of David Feltman, Designated Representative, Volume 1

Conducted on March 16, 2023

385

1 Q. (By Mr. Bosch) And so why would
2 communicating between Algon and landlord give rise or
3 increase the risk of a fraudulent transfer?

4 A. I was concerned that Algon might disclose
5 things to the landlord that we didn't think the
6 landlord needed -- information the landlord didn't
7 need and wasn't entitled to.

8 Q. Did that include the fact that IWA
9 remained a 90 percent member in RSD?

10 MS. DAVIS: Objection as to form.

11 THE WITNESS: I don't recall whether
12 that was a consideration.

13 Q. (By Mr. Bosch) So as you sit here today,
14 is it your testimony that it was not a consideration?

15 A. No. I just don't recall that being a
16 consideration.

17 Q. All right. So what was the consideration?
18 What was it that Algon might say to the landlord that
19 you thought the landlord had no right to know that
20 could give rise to a fraudulent transfer claim?

21 MS. KROPF: Objection. Form.

22 THE WITNESS: Mostly surrounding

Transcript of David Feltman, Designated Representative, Volume 1

Conducted on March 16, 2023

386

1 competitive issues with the building.

2 Q. (By Mr. Bosch) How would that give rise to
3 a fraudulent transfer claim?

4 A. Oh, I'm sorry. As to the fraudulent
5 transfer claim. I think that there was a risk that
6 the landlord would look at the transaction and make a
7 fraudulent transfer claim.

8 Q. And what was it about the transaction that
9 you thought should not be disclosed to the landlord
10 because it increased the risk of a fraudulent
11 transfer claim?

12 MS. DAVIS: Objection as to form.

13 THE WITNESS: Subject to
14 capitalization, the presence of IWA in the
15 partnership, I think there were a number of
16 factors that could have been a concern with
17 respect to the fraudulent transfer claim.
18 That said, I'm not a lawyer, and I don't
19 know the details of a fraudulent transfer
20 claim. I just thought, in general, it was
21 best to keep Algon and the lessor apart.

22 Q. (By Mr. Bosch) Because you didn't want

Transcript of David Feltman, Designated Representative, Volume 1

Conducted on March 16, 2023

387

1 Algon to disclose, for example, IWA's interest in the
2 partnership?

3 MS. DAVIS: Objection as to form.

4 Misstates evidence.

5 Q. (By Mr. Bosch) That was one of the
6 considerations?

7 A. And other factors.

8 Q. Yeah, so one of -- one of the factors for
9 restricting Algon's discussions with the landlord, is
10 you were concerned that Algon would disclose IWA's
11 interest in RSD, correct?

12 MS. DAVIS: Objection as to form.

13 Misstates evidence.

14 THE WITNESS: A factor, yes.

15 Q. (By Mr. Bosch) And another factor was you
16 were concerned that Algon would disclose the
17 capitalization of RSD?

18 A. Yes.

19 Q. Which was limited to \$3.9 million?

20 A. Yes. In a short capitalization, yes.

21 Q. Which you testify --

22 A. However --

Transcript of David Feltman, Designated Representative, Volume 1

Conducted on March 16, 2023

406

1 Q. -- term sheet. So does that suggest to
2 you that that's Version 3 of the term sheet?

3 A. I don't know whether that's what .3 means.

4 Q. And the changes reflected in this markup
5 were all made by Algon; is that correct?

6 A. I don't know.

7 Q. Directing your attention to paragraph 4D,
8 which is the disposition agreement. You see there,
9 there was an insertion for after 38 months if the
10 Algon member opts to sell the property?

11 A. Yes.

12 Q. Was that Algon's insertion, or was that
13 your proposal?

14 A. Don't know.

15 Q. And do you know how 38 months was
16 determined as the appropriate period of time for
17 Algon to consider a disposition?

18 A. I think at that point, the litigation risk
19 would go away because we'd be beyond the fraudulent
20 transfer date, and also our expectation was that
21 there would be leasing activity, and by then the
22 property would be in a position to be sold.

EXHIBIT B



Planet Depos®
We Make It *Happen™*

Transcript of Robert W. Barron

Date: April 14, 2023

Case: Rock Spring Plaza II LLC -v- Investors Warranty of America LLC, et al.

Planet Depos

Phone: 888.433.3767

Email: transcripts@planetdepos.com

www.planetdepos.com

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MARYLAND

3 ROCK SPRING PLAZA II, LLC,

4 Plaintiff,

5 -vs-

6 INVESTORS WARRANTY OF AMERICA, LLC, et al.,

7 Defendants.
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

VIDEOTAPED DEPOSITION OF ROBERT W. BARRON

Friday, April 14, 2023

9:04 a.m. - 5:42 p.m.

(Conducted Remotely)

Stenographically Reported By
Pamela J. Pelino, RPR, FPR, CLR
Notary Public, State of Florida
PLANET DEPOS

- - -

Transcript of Robert W. Barron
Conducted on April 14, 2023

2

1 APPEARANCES:

2 On behalf of the Plaintiff:

3 WILLIAM BOSCH, ESQUIRE
4 PILLSBURY WINTHROP SHAW PITTMAN, LLP
5 1200 Seventeenth Street, NW
6 Washington, DC 20036-3006
7 202.663.8142
8 anthony.cavanaugh@pillsburylaw.com

9 On behalf of the Rock Springs Drive, LLC:

10 SARA KROPH, ESQUIRE
11 KROPH MOSELEY
12 1100 H Street NW
13 Suite 1220
14 Washington, DC 20005
15 202.627.6899
16 sara@kmlawfirm.com

17 On behalf of Investors Warranty of America, LLC:

18 REBECCA A. DAVIS, ESQUIRE
19 SEYFARTH SHAW LLP
20 1075 Peachtree Street NE
21 Suite 2500
22 Atlanta, Georgia 30309
404.885.1500
rdavis@seyfarth.com

-Continued-

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

A325

Transcript of Robert W. Barron
Conducted on April 14, 2023

3

1 APPEARANCES CONTINUED:

2 On behalf of the Witness:

3 ANTHONY CARRIUOLO, ESQUIRE
4 BERGER SINGERMEN, LLP
5 201 East Las Olas Boulevard
6 Fort Lauderdale, Florida 33301
7 954.712.5146
8 acarriuolo@bergersingerman.com

9 Present:

10 PAUL RUBIN

11 TROY TAYLOR

12 Videographer:

13 MICHAEL PIETANZA
14
15
16
17
18
19
20
21
22

Transcript of Robert W. Barron
Conducted on April 14, 2023

6

P R O C E E D I N G S

- - -

Deposition taken before Pamela J. Pelino,
Registered Professional Court Reporter and Notary Public
in and for the State of Florida at Large, in the above
cause.

- - -

THE VIDEOGRAPHER: Here begins media 09:04:43
Number 1 in the videotaped deposition of 09:04:44
Robert Barron in the matter of Rock Spring 09:04:46
Plaza II, LLC, versus Investors Warranty of 09:04:48
America, LLC, in the court -- in the United 09:04:53
States District Court for the District of 09:04:57
Maryland, Case Number 20-cv-01502-PJM. 09:04:59

Today's date is Friday, April 14th, 09:05:07
2023. The time on the video monitor is 9:05 09:05:11
a.m. Eastern Standard Time. 09:05:16

The remote videographer is 09:05:19
Michael Pietanza, representing Planet Depos. 09:05:21
All parties at this video deposition are 09:05:25
attending remotely. 09:05:26

Would counsel please voice identify 09:05:27

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

A327

Transcript of Robert W. Barron
Conducted on April 14, 2023

7

1	themselves and state who they represent.	09:05:27
2	MR. BOSCH: William Bosch, from the law	09:05:33
3	firm of Pillsbury Winthrop Shaw Pittman, on	09:05:34
4	behalf of the plaintiff.	09:05:36
5	MS. KROPF: Sara Kropf from	09:05:38
6	Kropf Moseley on behalf of Rock Springs	09:05:40
7	Drive, LLC, and also from Rock Springs Drive	09:05:43
8	are Troy Taylor and Paul Rubin.	09:05:47
9	MR. CARRIUOLO: Anthony Carriuolo from	09:05:52
10	Berger Singerman, LLP for the witness,	09:05:53
11	Robert Barron.	09:05:56
12	MS. DAVIS: Rebecca Davis from Seyfarth	09:05:56
13	Shaw for Investors Warranty of America LLC.	09:05:56
14	THE VIDEOGRAPHER: The deposition	09:06:07
15	officer today is Pamela Pelino, representing	09:06:08
16	Planet Depos. The witness will now be sworn.	09:06:11
17	- - -	
18	Thereupon,	
19	ROBERT W. BARRON,	
20	having been first duly sworn or affirmed, was	
21	examined and testified as follows:	
22	THE WITNESS: I do.	

Transcript of Robert W. Barron

Conducted on April 14, 2023

8

1	COURT REPORTER: Thank you.	
2	DIRECT EXAMINATION	09:06:29
3	BY MR. BOSCH:	09:06:30
4	Q. Good morning, Mr. Barron. How are you?	09:06:31
5	A. Good morning. Good.	09:06:35
6	Q. Would you please state your full name?	09:06:36
7	A. Sure. Robert Wallace Barron.	09:06:38
8	Q. Mr. Barron, you're a partner with the	09:06:42
9	Berger Singerman firm?	09:06:43
10	A. Yes.	09:06:45
11	MR. BOSCH: I'd like to have the court	09:06:45
12	reporter pull up tab A, please, which we will	09:06:46
13	mark as IWA Exhibit 96.	09:06:51
14	(Reporter clarifies.)	09:07:08
15	MR. BOSCH: Thank you.	09:07:09
16	(Exhibit IWA 96 was marked for	09:07:10
17	identification.)	09:07:10
18	BY MR. BOSCH:	09:07:11
19	Q. Mr. Barron, I'm just going to ask if	09:07:13
20	you would kindly identify and confirm for me that	09:07:15
21	Exhibit 96, IWA96, is a true and correct copy of	09:07:19
22	your bio?	09:07:23

Transcript of Robert W. Barron

Conducted on April 14, 2023

64

1 assignment." 10:06:11

2 Q. All right. You understood from the 10:06:11

3 beginning, based on your initial conversation with 10:06:13

4 Mr. Feltman, that IWA's objective, in forming this 10:06:17

5 new entity and assigning the ground lease to the 10:06:22

6 new entity was to get IWA off the hook? 10:06:25

7 MS. KROPF: Objection as to form. 10:06:28

8 THE WITNESS: That was part of the 10:06:34

9 mission. That was part of the plan, 10:06:35

10 because -- based upon the terms of the lease. 10:06:37

11 The other part of the plan was the 10:06:39

12 reason why Algon was involved, was the hope 10:06:41

13 that the landlord would negotiate at some 10:06:45

14 point with the tenant, and they would 10:06:50

15 actually make it economically viable. 10:06:53

16 Because they were in the business to 10:06:56

17 make money. So if you could make the asset 10:06:57

18 economically viable, that's why Algon was 10:07:00

19 involved, as people that have done that in 10:07:04

20 the past. 10:07:07

21 BY MR. BOSCH: 10:07:08

22 Q. Do you recall there being any 10:07:10

Transcript of Robert W. Barron

Conducted on April 14, 2023

65

1 discussion as to when Algon would begin having 10:07:11

2 these discussions with the landlord? 10:07:14

3 A. I remember there was a delay in -- can 10:07:18

4 I have a request that -- I don't -- I can't see 10:07:21

5 you. Could we take down this document? I just 10:07:23

6 see a document. 10:07:26

7 Q. Ah, yes, we can take this document 10:07:28

8 down. 10:07:30

9 A. Okay. Thank you. 10:07:31

10 Q. So, Mr. Barron, do you recall there 10:07:32

11 being any discussion as to when Algon would begin 10:07:40

12 having these discussions with the landlord? 10:07:43

13 A. I knew there was a -- there was a 10:07:45

14 discussion of a delay, to delay negotiations for a 10:07:49

15 time period. 10:07:56

16 Q. Do you recall what that time period 10:07:57

17 was? 10:08:02

18 A. I went back and looked at the 10:08:02

19 documents. I think the term sheet had something 10:08:04

20 like 36 months or 38 months. It was some "month" 10:08:05

21 time period. 10:08:08

22 Q. Do you recall there being any 10:08:10

Transcript of Robert W. Barron

Conducted on April 14, 2023

66

1	discussion as to why Mr. Feltman and IWA wanted to	10:08:11
2	delay Algon from having discussions with the	10:08:14
3	landlord for 36 months or so?	10:08:17
4	MS. KROPF: Objection as to form.	10:08:20
5	THE WITNESS: My understanding was a	10:08:21
6	combination of the lack -- severe lack of	10:08:25
7	trust with the landlord based upon this other	10:08:30
8	litigation, concern that the landlord would	10:08:35
9	not honor the terms of the lease. And so the	10:08:36
10	concept of getting beyond the time period	10:08:42
11	for -- to try to attack the agreement based	10:08:49
12	upon transfer.	10:08:53
13	BY MR. BOSCH:	10:08:55
14	Q. That was one of the purposes for	10:08:56
15	structuring this transaction that Mr. Feltman	10:08:57
16	identified from the beginning?	10:08:59
17	MS. KROPF: Objection as to form.	10:09:02
18	THE WITNESS: I don't know if -- I	10:09:02
19	don't know if in that call, that was	10:09:10
20	discussed. But we got a term sheet later.	10:09:12
21	So I don't know if -- and, again, to me, that	10:09:15
22	call with him was very high level.	10:09:17

Transcript of Robert W. Barron

Conducted on April 14, 2023

79

1 A. The hope -- the hope was that the 10:30:27
2 parties would negotiate. 10:30:33

3 Q. I understand. 10:30:36

4 And was there any discussion of what 10:30:38
5 would happen if the landlord did not agree to 10:30:39
6 modify the terms of the ground lease? 10:30:43

7 A. Not a lot of discussion. But at some 10:30:51
8 point, if there's -- there was great unknown with 10:30:56
9 the market turn, if the market didn't turn. 10:31:00
10 Because my understanding just generally was that 10:31:04
11 the ground rent was too high for the current 10:31:07
12 market of rent, you know, subleases for renting 10:31:11
13 the building. 10:31:15

14 So either the market would turn, or the 10:31:16
15 landlord would decide to renegotiate the ground 10:31:20
16 lease. And so they -- you know, they didn't know. 10:31:26
17 That's why part of our negotiation of the 10:31:32
18 operating agreement was an upside for Algon if 10:31:37
19 they could -- if they could turn this thing 10:31:41
20 around. 10:31:42

21 Q. Was there any discussion of what would 10:31:43
22 happen if the market didn't turn and if the 10:31:45

Transcript of Robert W. Barron

Conducted on April 14, 2023

80

1 landlord did not agree to modify the terms of the 10:31:47
2 ground lease? 10:31:50

3 A. Not in great detail. But I think at 10:31:54
4 some point, there may be a situation where we have 10:31:57
5 to give back the interest to the landlord, which 10:32:00
6 is frankly what the prior tenant, the Camalier 10:32:03
7 entity did when they were tenant. 10:32:07

8 Q. What do you mean by "give back the 10:32:09
9 interest to the landlord"? 10:32:11

10 A. You basically say that we can't make 10:32:12
11 this a going concern -- I don't know. Whatever -- 10:32:15
12 it's the same thing that the Camalier tenant did 10:32:17
13 on the original loan, that they -- they couldn't 10:32:21
14 make a go of it. They defaulted, and they gave 10:32:25
15 back the interest through foreclosure. 10:32:30

16 They would -- they would, I assume, 10:32:32
17 talk to the landlord and say, it's not working. 10:32:33
18 You are not renegotiating. The market is not 10:32:35
19 turning, so tell us what you want to do with your 10:32:40
20 interest. 10:32:43

21 Q. I want to understand more of what you 10:32:50
22 mean by giving it back to the landlord. I don't 10:32:51

Transcript of Robert W. Barron

Conducted on April 14, 2023

81

1 understand that. Can you explain what that, 10:32:56
2 what -- how -- as a sophisticated lawyer, what 10:33:00
3 does that mean to give the ground lease interest 10:33:03
4 back to the landlord? 10:33:05
5 A. Yeah. So -- well, I mean, you're 10:33:07
6 sophisticated. Your client did this in connection 10:33:12
7 with the predecessor to the lender; right? It was 10:33:15
8 a joint venture between the Camaliers and -- it's 10:33:20
9 written down here. It's Lockheed Martin. 10:33:24
10 Lockheed Martin and the Camaliers were 10:33:30
11 joint ventures as the tenant. They borrowed 10:33:32
12 money, and they were unable to make it work for 10:33:34
13 whatever reason. And they effectively gave back 10:33:37
14 the interest. And now the landlord didn't take it 10:33:40
15 back, because I guess it was encumbered by a 10:33:43
16 mortgage. So the lender foreclosed it. 10:33:46
17 So here we have a situation where it's 10:33:49
18 free and clear. There's no third-party mortgage. 10:33:51
19 So if there's no third-party mortgage, the tenant 10:33:53
20 would say, landlord, if you're not going to 10:33:57
21 renegotiate and we cannot find tenants, we need to 10:33:59
22 negotiate a -- an orderly turning over the keys. 10:34:02

Transcript of Robert W. Barron

Conducted on April 14, 2023

82

1 I mean, that's just -- that's one of 10:34:09
2 the options in a workout situation when the 10:34:10
3 parties can't reach a win-win situation. 10:34:12

4 Q. Meaning that ground lease tenant would 10:34:16
5 walk away from its obligations under the ground 10:34:18
6 lease? 10:34:20

7 A. Correct. Or the landlord could get a 10:34:21
8 judgment against the entity. They could sue in 10:34:24
9 court and get a judgment against the entity. 10:34:26

10 That -- I don't know, I don't know the 10:34:28
11 facts of what happened with the Camalier/Lockheed 10:34:31
12 tenant. Did they get a judgment against that 10:34:35
13 tenant? Because they obviously walked away. How 10:34:37
14 did they walk away? 10:34:40

15 Q. Mr. Barron, I want to go to your 10:34:42
16 discussions with Mr. Feltman, where this was -- 10:34:44
17 this possibility was discussed. 10:34:47

18 Was it something Mr. Feltman discussed? 10:34:52

19 A. No, sir. This was a very big, big high 10:34:55
20 level conversation of -- as I said, we had -- we 10:34:57
21 have a ground lease. The lease documents say we 10:35:03
22 can transfer the document, the lease, and be 10:35:05

Transcript of Robert W. Barron

Conducted on April 14, 2023

83

1 released, very, very high level. 10:35:10

2 Q. But who raised this possibility of 10:35:12

3 walking away if the ground lease was not modified 10:35:13

4 or if the market didn't improve? 10:35:17

5 A. Well, it's just logic. I don't 10:35:19

6 remember if there's a -- you know, if there's a

7 who, but that's the options when you go forward in

8 a distressed asset.

9 Q. Yes, I understand. 10:35:34

10 But you said that there were 10:35:35

11 conversations, and I want to know who participated 10:35:36

12 in those conversations. 10:35:38

13 MS. KROPF: And I'll caution you if 10:35:42

14 they are conversations with your clients, 10:35:45

15 then you should not reveal them. But if 10:35:47

16 they're conversations with Mr. Feltman or IWA 10:35:49

17 or somebody else, you can talk about them. 10:35:51

18 THE WITNESS: I don't -- I don't recall 10:35:57

19 conversations -- it would be really with 10:35:58

20 Mr. Snitker -- on long-term, at the end of 10:36:05

21 the day. 10:36:08

22 My thought was they were hoping that 10:36:15

Transcript of Robert W. Barron

Conducted on April 14, 2023

202

1	BY MR. BOSCH:	12:55:42
2	Q. All right. And do you see the term	12:55:42
3	there, "How do we bury the entity"?	12:55:44
4	A. Uh-huh.	12:55:47
5	Q. Yes?	12:55:48
6	A. Yes. Yes, sir.	12:55:48
7	Q. What does that mean to you?	12:55:49
8	A. I think the -- what I -- in our	12:55:52
9	terminology, we'd use that to mean what do we do	12:55:56
10	at the end of the day if this doesn't work out.	12:56:02
11	You know, if we can't lease it out, if the	12:56:04
12	landlord will not negotiate, how do we resolve	12:56:06
13	this?	12:56:11
14	Q. And why were you considering burying	12:56:11
15	the entity before the entity was even formed?	12:56:13
16	MS. KROPF: So objection to the extent	12:56:18
17	that gets to his conversations with his	12:56:19
18	clients about what they were doing on their	12:56:22
19	side. If you want to talk about IWA	12:56:24
20	requirement negotiations, that's fine. But	12:56:25
21	to the extent you're asking about his	12:56:27
22	communications with his clients we object on	12:56:29

Transcript of Robert W. Barron

Conducted on April 14, 2023

203

1	privilege grounds.	12:56:31
2	BY MR. BOSCH:	12:56:33
3	Q. Can you answer that question without	12:56:33
4	revealing privileged communications with Algon?	12:56:34
5	A. No, sir, I don't -- I just don't recall	12:56:37
6	this. I didn't recall -- I don't recall this, and	12:56:39
7	I just saw it again when I reviewed the document.	12:56:44
8	Q. So you don't have any specific	12:56:48
9	recollection of there being discussion about how	12:56:50
10	to bury the entity even before it was formed?	12:56:52
11	A. No, sir.	12:56:56
12	Q. May I direct your attention to	12:57:02
13	IWA Exhibit 38. And then after this, we'll break	12:57:04
14	for lunch if that's okay.	12:57:07
15	A. Sure.	12:57:09
16	Q. All right. And while you're grabbing	12:57:24
17	control of IWA 38, I'll identify it for the record	12:57:26
18	as an email from Troy Taylor to David Feltman, and	12:57:29
19	it's copied to Paul Rubin, Jordi Gusó and	12:57:32
20	yourself, Robert Barron. And the subject is "6560	12:57:36
21	Rock Springs Term Sheet IWA-Algon," and it's dated	12:57:40
22	May 5th, 2017.	12:57:45

Transcript of Robert W. Barron

Conducted on April 14, 2023

212

1	testimony with anyone during the lunch break?	14:03:04
2	A. I don't believe we discussed substance.	14:03:07
3	Q. All right. Fair enough.	14:03:10
4	Mr. Barron, I want to go back to the	14:03:12
5	discussions you recall having with IWA concerning	14:03:14
6	what to do if RSD, this Newco, could not lease up	14:03:18
7	the property or get the landlord to modify the	14:03:24
8	terms of the ground lease. Do you recall that	14:03:27
9	discussion we had earlier?	14:03:31
10	A. Yes, sir.	14:03:32
11	Q. You talked about the possibility of	14:03:33
12	walking away from the ground lease. Do you recall	14:03:35
13	that?	14:03:40
14	A. Yes.	14:03:41
15	Q. And you recall also, you refer to that	14:03:41
16	as maybe giving back the ground lease to the	14:03:43
17	landlord?	14:03:46
18	A. Yes.	14:03:47
19	Q. By which you meant that the landlord	14:03:47
20	would have nobody to look to for the payment of	14:03:49
21	rent?	14:03:52
22	A. Or they would get a judgment against	14:03:53

Transcript of Robert W. Barron

Conducted on April 14, 2023

213

1	the -- RSD.	14:03:54
2	Q. Okay. And was there any timeline	14:03:57
3	discussed between the parties for when that might	14:03:59
4	occur?	14:04:01
5	A. No, sir.	14:04:02
6	Q. So let's say after nine years, was	14:04:04
7	there a discussion of what to do then if RSD still	14:04:06
8	was unable to generate income to cover its	14:04:09
9	financial obligations?	14:04:12
10	A. I don't recall a discussion of when,	14:04:16
11	because I think the whole issue was the market	14:04:20
12	and -- and/or willingness of landlord to	14:04:22
13	negotiate.	14:04:27
14	Q. Well, let me ask: Was it contemplated	14:04:28
15	at the time of formation of RSD that the entity,	14:04:31
16	RSD, could be dissolved before the expiration of	14:04:34
17	the ground lease?	14:04:38
18	A. I don't -- I don't -- I don't know --	14:04:41
19	not dissolved, but I think it was contemplated	14:04:44
20	that at some point, there would either be a	14:04:47
21	negotiation with the landlord or other decisions	14:04:50
22	would be made.	14:04:53

Transcript of Robert W. Barron

Conducted on April 14, 2023

215

1 said that it -- I didn't suggest it would be 14:05:49

2 dissolved. Why are you asking me a question that 14:05:52

3 is so obviously a made-up question? 14:05:55

4 Q. All right. Well, let's go back to the 14:05:59

5 operating agreement that you negotiated. 14:06:02

6 A. Uh-huh. 14:06:04

7 Q. This is Exhibit IWA 5. If you don't 14:06:05

8 mind calling that up. 14:06:16

9 Please scroll down to page 33. You're 14:06:25

10 at 31 now. Just scroll down to page 33. There we 14:06:27

11 go. Right there. Do you see Article 10? 14:06:47

12 A. Yes. 14:06:49

13 Q. "Dissolution and Winding Up"? 14:06:51

14 A. Yes. 14:06:53

15 Q. So Section 10.1, which is the 14:06:55

16 subsection for dissolution, it says, "The company 14:06:57

17 shall be dissolved, its assets shall be disposed 14:07:01

18 of, and its affairs wound up on the first to occur 14:07:06

19 of the following" -- and that's -- the following 14:07:10

20 are identified as "the dissolution events." 14:07:12

21 Do you see that? 14:07:14

22 A. I do. 14:07:19

Transcript of Robert W. Barron

Conducted on April 14, 2023

216

1 Q. And so here the very first event was a 14:07:19
2 date, August 1st, 2026. Do you see that? 14:07:22

3 A. I do. 14:07:26

4 Q. So at the time of its formation, RSD 14:07:27
5 contemplated dissolving and winding up just under 14:07:29
6 nine years after the date of the assignment, did 14:07:35
7 it not? 14:07:37

8 A. That was the earliest date, yes. 14:07:40

9 Q. So this was an entity that already 14:07:42
10 contemplated its dissolution at the time of its 14:07:43
11 formation; isn't that right? 14:07:46

12 A. It contemplated a date that it would be 14:07:47
13 dissolved. 14:07:50

14 Q. Right. Which was just nine years after 14:07:51
15 the date of its formation; right? 14:07:53

16 A. I haven't counted the years, but, it's, 14:07:59
17 what -- yeah, nine years. 14:08:00

18 Q. Approximately nine years. 14:08:04

19 All right. So going back to my 14:08:06
20 question: How could RSD keep, observe and perform 14:08:08
21 all of the terms, covenants, conditions and 14:08:11
22 provisions of the ground lease if it was to be 14:08:13

Transcript of Robert W. Barron

Conducted on April 14, 2023

217

1	dissolved at least by August 1st, 2026?	14:08:15
2	MS. KROPF: Objection as to form.	14:08:21
3	THE WITNESS: It would need to either	14:08:25
4	renegotiate with the landlord or modify this	14:08:27
5	provision.	14:08:31
6	BY MR. BOSCH:	14:08:31
7	Q. All right. So that's not my question.	14:08:32
8	You recall under the assignment	14:08:35
9	provision -- under the assignment, the assignee	14:08:37
10	agreed to keep, perform, and observe all of the	14:08:43
11	terms, conditions of the ground lease, do you not?	14:08:45
12	A. I do.	14:08:48
13	Q. And yet here, as of the date of the	14:08:48
14	formation of that assignee, it already	14:08:50
15	contemplated it would be dissolved years before	14:08:54
16	the ground lease expired; isn't that right?	14:08:56
17	A. That's correct.	14:08:59
18	Q. So by its terms, RSD never intended to	14:09:00
19	keep, observe and perform all of the terms,	14:09:07
20	covenants, conditions and provisions of the ground	14:09:10
21	lease the remainder of the term of the ground	14:09:12
22	lease; isn't that right?	14:09:14

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

A344

Transcript of Robert W. Barron

Conducted on April 14, 2023

219

1 which could require a long time period as to 14:10:07
2 wind up the affairs of the entity. 14:10:10
3 BY MR. BOSCH: 14:10:13
4 Q. All right. But what happens to the 14:10:13
5 entity's ability to satisfy the tenant's 14:10:15
6 obligations under the ground lease once it's 14:10:19
7 dissolved? 14:10:22
8 MS. KROPF: Objection as to form. 14:10:23
9 THE WITNESS: If it's dissolved, they 14:10:25
10 still can wind up their affairs. The issue 14:10:26
11 is, is that when do they end their affairs 14:10:29
12 post-dissolution, end the wind up. 14:10:36
13 BY MR. BOSCH: 14:10:41
14 Q. Right. So let's say after the 14:10:41
15 dissolution event, when the company is wound up, 14:10:42
16 after the winding-up process, what happens to the 14:10:45
17 company's ability to keep, observe and perform the 14:10:49
18 tenant's obligations under the ground lease? 14:10:53
19 A. At that point, they would be turning 14:10:57
20 the keys over to the landlord. 14:10:59
21 Q. All right. So at the time of its 14:11:02
22 formation, RSD anticipated turning the keys over 14:11:03

Transcript of Robert W. Barron

Conducted on April 14, 2023

239

1 member. And the understanding would be that our 14:29:29
2 firm would be the lawyer for the entity as well. 14:29:33
3 But at that point -- I guess, at that point, we're 14:29:37
4 lawyer for Algon. 14:29:41
5 Q. All right. And is it your 14:29:45
6 understanding that the only reason you were 14:29:47
7 identified as the person to whom questions should 14:29:49
8 be directed is because you were going to be the 14:29:51
9 lawyer for RSD? 14:29:54
10 A. Well, I was the lawyer for the managing 14:29:57
11 member. Managing member runs the entity. So I 14:29:59
12 was -- at that point, I was lawyer for the 14:30:05
13 managing member. And I would also be legal 14:30:07
14 counsel of our company -- our firm, of the legal 14:30:11
15 entity itself. 14:30:16
16 Q. Who decided that you would be the 14:30:19
17 person to whom questions should be directed? 14:30:21
18 A. I believe it was probably Snitker. 14:30:31
19 Q. Gregg Snitker, the in-house counsel for 14:30:37
20 IWA? 14:30:39
21 A. Correct. 14:30:40
22 Q. Did you have any discussions with him 14:30:40

Transcript of Robert W. Barron

Conducted on April 14, 2023

247

1 MS. KROPF: Objection as to form. 14:36:59

2 THE WITNESS: Read the terms of the 14:36:59

3 lease. I think part of the -- part of the -- 14:37:02

4 part of the challenge is is that I looked you 14:37:09

5 up when you can -- contacted me, and I found 14:37:13

6 out that you were the head of the litigation 14:37:20

7 of your prior firm. 14:37:22

8 BY MR. BOSCH: 14:37:23

9 Q. Not my question, sir. 14:37:24

10 A. Yes, it is. 14:37:25

11 Q. I'm asking what you understood you were 14:37:26

12 authorized to disclose -- 14:37:28

13 A. To keep -- 14:37:29

14 (Simultaneous speakers.) 14:37:30

15 Q. Mr. Barron, let me finish. 14:37:30

16 On August 30, 2017, as the person to 14:37:32

17 whom questions were to be directed, what did you 14:37:35

18 understand you were authorized to disclose? 14:37:38

19 MS. KROPF: Let me just -- Mr. Bosch, 14:37:41

20 I'm sorry to be frustrating here, but I need 14:37:42

21 to interpose an objection. Because he's 14:37:45

22 stated repeatedly that he's the lawyer for 14:37:47

Transcript of Robert W. Barron

Conducted on April 14, 2023

248

1 the entity who can only be authorized by his 14:37:48
2 clients. 14:37:52
3 And to the extent any authority comes 14:37:52
4 from your clients, I instruct you not to 14:37:54
5 answer. 14:37:56
6 THE WITNESS: Okay. 14:37:56
7 MS. KROPF: Whoever the client is, that 14:37:57
8 would be privileged. We'd object to it. 14:37:58
9 And I instruct you not to answer. 14:38:01
10 THE WITNESS: Okay. Thank you. 14:38:04
11 BY MR. BOSCH: 14:38:05
12 Q. So were you advised by your client as 14:38:06
13 to what information you could disclose? 14:38:08
14 MS. KROPF: Objection. 14:38:11
15 And I instruct you not to answer. 14:38:11
16 THE WITNESS: Understood. 14:38:13
17 BY MR. BOSCH: 14:38:14
18 Q. So you can't say what information you 14:38:15
19 were permitted to disclose or were not permitted 14:38:16
20 to disclose without you divulging attorney-client 14:38:20
21 communications? 14:38:26
22 MS. KROPF: You can -- object to form. 14:38:29

Transcript of Robert W. Barron

Conducted on April 14, 2023

249

1	But you can answer.	14:38:34
2	THE WITNESS: I don't know how I	14:38:37
3	could --	14:38:37
4	(Reporter clarifies.)	14:38:38
5	MS. KROPF: Yes. Object to form.	14:38:38
6	You can answer.	14:38:38
7	THE WITNESS: I don't know to answer	14:38:38
8	that question without discussing	14:38:38
9	communication with my client.	14:38:39
10	MR. BOSCH: And, Ms. Kropf, so it's	14:38:44
11	clear, you're saying that all communications	14:38:46
12	with his client about the information that he	14:38:48
13	could or could not disclose is privileged?	14:38:49
14	MS. KROPF: Yes.	14:38:53
15	BY MR. BOSCH:	14:38:57
16	Q. Were you involved in any discussions	14:38:59
17	concerning what information to disclose to	14:39:01
18	landlord about the assignment at the time of this	14:39:03
19	notice, August 30th, 2017?	14:39:09
20	MS. KROPF: You can answer that to the	14:39:12
21	extent it's not disclosing communications	14:39:13
22	with your client.	14:39:15

EXHIBIT C



Planet Depos®
We Make It *Happen™*

Transcript of Troy Taylor

Date: April 6, 2023

Case: Rock Spring Plaza II LLC -v- Investors Warranty of America LLC, et al.

Planet Depos

Phone: 888.433.3767

Email: transcripts@planetdepos.com

www.planetdepos.com

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF MARYLAND

3 CIVIL ACTION FILE

4 NO: 8:20-CV-01502-PJM

5 -----x
6 ROCK SPRING PLAZA II, LLC,
7 Plaintiff,

8 INVESTORS WARRANTY OF AMERICA, LLC,

9 et al.

10 Defendants.
11 -----x

12
13 VIDEOTAPED DEPOSITION OF TROY TAYLOR

14 Miami, Florida

15 Thursday, April, 6, 2023

16
17 REPORTED BY:

18 BOBBIE ZELTMAN
19 Professional Realtime Court Reporter
20 and Notary for New York and Florida
21

22 Job Number 484448

Transcript of Troy Taylor

April 6, 2023

3

1

April 6, 2023

2

9:22 a.m.

3

4

Videotaped deposition of Troy Taylor taken

5

by Plaintiff, pursuant to Notice, taken in Miami,

6

Florida before BARBARA R. ZELTMAN, a Professional

7

Realtime Court Reporter and Notary Public within and

8

for the State of Florida.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

A353

Transcript of Troy Taylor

April 6, 2023

4

1 A P P E A R A N C E S:

2
3 On behalf of the Plaintiff Rock Spring Plaza II:

4 PILLSBURY WINTHROP SHAW PITTMAN, LLP

5 1200 Seventeenth Street, N.W.

6 Washington, D.C. 20036

7 (202) 663-8000

8 BY: WILLIAM BOSCH, ESQ.

9 e-mail: william.bosch@pillsburylaw.com

10 BY: KATHERINE DANIAL, ESQ.

11 e-mail: katherine.danial@pillsburylaw.com

12
13
14 On behalf of the Defendant Investors Warranty of
15 America, LLC:

16 SEYFARTH SHAW, LLP

17 1075 Peachtree Street, N.E.

18 Suite 2500

19 Atlanta, Georgia 30309

20 (404) 885-1500

21 BY: REBECCA A. DAVIS, ESQ.

22 e-mail: rdavis@seyfarth.com

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

A354

Transcript of Troy Taylor

April 6, 2023

5

1 A P P E A R A N C E S: (Cont'd)

2
3 On behalf of the Defendant Rock Spring Drive LLC:

4 KROPF MOSELEY PLLC

5 1100 H Street NW

6 Suite 1220

7 Washington, DC 20005

8 (202) 627-6900

9 BY: SARA KROPF, ESQ.

10 sara@kropf-law.com

11
12
13 ALSO PRESENT: Paul Rubin, RSD

14 Michael Pietanza, Videographer

Transcript of Troy Taylor

April 6, 2023

9

1
2 IT IS HEREBY STIPULATED AND AGREED
3 by and between the attorneys for the respective
4 parties herein that filing and sealing be and
5 the same are hereby waived.

6 IT IS FURTHER STIPULATED AND AGREED
7 that all objections, except as to the form of
8 the question, shall be reserved to the time
9 of trial.

10 IT IS FURTHER STIPULATED AND AGREED
11 that the within deposition may be signed and
12 sworn to before any officer authorized to
13 administer an oath with the same force and
14 effect as if signed and sworn to before
15 the Court.
16
17
18
19
20
21
22

Transcript of Troy Taylor

April 6, 2023

10

1	THE VIDEOGRAPHER: Here begins	09:22:11
2	Media Number 1 in the videotaped	09:22:11
3	deposition of Troy Taylor, in the	09:22:13
4	matter of Rock Spring Plaza II, LLC,	09:22:16
5	versus Investors Warranty of America,	09:22:21
6	LLC, et al., in the United States	09:22:23
7	District Court for the District of	09:22:25
8	Maryland.	09:22:29
9	Case No. 20-cv-01502-PJM.	09:22:29
10	Today's date is Thursday, April 6,	09:22:37
11	2023. The time on the video monitor is	09:22:40
12	9:21 a.m. Eastern Standard Time.	09:22:44
13	The videographer today is Michael	09:22:47
14	Pietanza representing Planet Depos.	09:22:49
15	This video deposition is taking	09:22:51
16	place at 1450 Brickell Avenue, Miami,	09:22:54
17	Florida.	09:22:58
18	Would counsel please voice-identify	09:22:58
19	themselves and state whom they represent.	09:23:01
20	MR. BOSCH: William Bosch from	09:23:04
21	the law firm of Pillsbury Winthrop	09:23:05
22	Shaw Pittman on behalf of the	09:23:05

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

A357

Transcript of Troy Taylor

April 6, 2023

11

1	Plaintiff.	09:23:07
2	MS. KROPF: Sara Kropf from	09:23:09
3	Kropf Moseley on behalf of Rock	09:23:11
4	Springs Drive LLC.	09:23:15
5	MS. DAVIS: Rebecca Davis from	09:23:17
6	the law firm of Seyfarth Shaw LLP, on	09:23:19
7	behalf of Investors Warranty of	09:23:20
8	America, LLC.	09:23:22
9	MR. BOSCH: And also with us is	09:23:24
10	Paul Rubin.	09:23:26
11	MS. KROPF: Yes. Paul Rubin is	09:23:27
12	also here, who is one of the	09:23:29
13	principals of Rock Springs Drive.	09:23:31
14	THE VIDEOGRAPHER: Thank you.	09:23:35
15	The court reporter today is Barbara	09:23:35
16	Zeltman representing Planet Depos.	09:23:37
17	Would the reporter please swear in	09:23:37
18	the witness.	09:23:37
19	THE REPORTER: Raise your right	09:23:37
20	hand, please, sir.	09:23:37
21	Do you solemnly swear that the	09:23:37
22	testimony you're about to give will be	09:23:37

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

A358

Transcript of Troy Taylor

April 6, 2023

12

1	the truth, the whole truth and nothing	09:23:37
2	but the truth, so help you God?	09:23:37
3	THE WITNESS: I do.	09:23:37
4	THE REPORTER: Very good.	09:23:37
5	Thank you.	09:23:37
6	TROY TAYLOR,	09:23:37
7	having been first duly sworn by	09:23:37
8	Barbara R. Zeltman, Notary Public,	09:23:37
9	was examined and testified as follows:	09:23:37
10	EXAMINATION	09:23:37
11	BY MR. BOSCH:	09:23:45
12	Q Good morning, Mr. Taylor.	09:23:47
13	How are you?	09:23:47
14	A Good morning, Mr. Bosch.	09:23:47
15	How are you?	09:23:48
16	Q Doing well. Thank you.	09:23:49
17	Please state your full name.	09:23:49
18	A Sure. Troy Theodore Taylor.	09:23:53
19	Q You know I am one of the attorneys	09:23:56
20	representing the plaintiff. First time we	09:23:57
21	met was when you were present for the	09:23:58
22	deposition of Mr. David Feltman, correct?	09:24:00

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

A359

Transcript of Troy Taylor

April 6, 2023

177

1	relevance to me signing bad boy guarantees.	12:01:52
2	BY MR. BOSCH:	12:01:54
3	Q So you and Mr. Rubin, as the sole	12:01:55
4	members of Longshore Ventures, took an	12:01:56
5	interest in a ground lease without having	12:01:57
6	conducted any due diligence as to the value	12:01:59
7	of that ground lease?	12:02:01
8	A Correct.	12:02:02
9	Q But you knew that the building was	12:02:10
10	vacant?	12:02:11
11	A I believe I did, yes.	12:02:13
12	Q Had been for several years?	12:02:15
13	A Which means big opportunity to get	12:02:17
14	something done.	12:02:19
15	Q And you knew there was no source of	12:02:20
16	income?	12:02:22
17	MS. KROPF: Objection as to	12:02:22
18	form.	12:02:22
19	A I was basically told that we had a	12:02:23
20	commitment from IWA to fund for some period	12:02:26
21	of time, and like every other situation, we	12:02:30
22	figured that we would figure out how to	12:02:33

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

A360

Transcript of Troy Taylor

April 6, 2023

178

1 maximize the value of the project. And the 12:02:35
2 understanding that I had was that IWA would 12:02:40
3 fund this until such time as we had a 12:02:42
4 consensual resolution of what we should do. 12:02:46

5 BY MR. BOSCH: 12:02:49

6 Q For what period of time did IWA 12:02:49
7 commit to fund RSD? 12:02:51

8 MS. KROPF: Objection as to 12:02:53
9 form. 12:02:53

10 A They didn't. They committed 12:02:54
11 ultimately \$3.9 million -- up to 12:02:57
12 3.9 million, which -- just so we're clear, 12:03:01
13 because I've heard in some other testimony 12:03:04
14 and in your questions, that's 18 months of 12:03:05
15 operating costs. And talking about how much 12:03:09
16 the ground lease is covered is irrelevant 12:03:12
17 because you can't pay the ground lease if 12:03:14
18 you don't pay the operating costs. 12:03:16

19 So basically 3.9 million is 12:03:18
20 approximately 18 months of runway. However, 12:03:20
21 they weren't obligated to fund 3.9 million. 12:03:24
22 They agreed to fund up to 3.9 million, which 12:03:26

Transcript of Troy Taylor

April 6, 2023

179

1	meant candidly any time they could have	12:03:33
2	stopped.	12:03:33
3	Basically I was told that they	12:03:35
4	would continue to fund this until we had a	12:03:35
5	successful resolution.	12:03:37
6	And one of the things we did -- and	12:03:38
7	you asked a question earlier on and I --	12:03:41
8	shame on me with due diligence -- we	12:03:44
9	asked -- I asked Mr. Feltman why he wanted	12:03:47
10	us to do this versus somebody that was just	12:03:49
11	a property management company.	12:03:51
12	And I can't remember the exact	12:03:53
13	wording and I can't remember the exact	12:03:56
14	discussion, but that he felt that at some	12:03:58
15	point in time down the road that our	12:04:00
16	restructuring experience would be an	12:04:05
17	important component to facilitating whatever	12:04:07
18	the final outcome was, and there would be	12:04:11
19	some of period of time while we sat and	12:04:12
20	watched things and then at some point in	12:04:15
21	time our restructuring expertise would be	12:04:17
22	very valuable and that was probably one of	12:04:20

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

A362

Transcript of Troy Taylor

April 6, 2023

180

1	my early questions to him as part of my due	12:04:22
2	diligence.	12:04:25
3	BY MR. BOSCH:	12:04:25
4	Q For what period of time did you	12:04:26
5	understand you were going to sit and watch	12:04:27
6	this?	12:04:29
7	A We never discussed time period.	12:04:29
8	Q So the \$3.9 million capital	12:04:36
9	funding, was that number determined by IWA?	12:04:39
10	A Yes.	12:04:41
11	Q You had nothing to do with it?	12:04:41
12	A No. I think originally it was less	12:04:42
13	and I think they came back and decided to do	12:04:45
14	more.	12:04:48
15	Q At the time you were negotiating	12:04:49
16	with Mr. Feltman, did you understand from	12:04:50
17	him that there were no prospects for the	12:04:52
18	sale of this ground lease interest?	12:04:54
19	A I don't understand the question.	12:04:59
20	Q Did Mr. Feltman tell you that they	12:05:00
21	had been trying to sell this ground lease	12:05:02
22	interest?	12:05:04

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

A363

Transcript of Troy Taylor

April 6, 2023

281

1	release transfer or termination of the	02:22:21
2	ground lease?	02:22:23
3	MS. KROPF: Objection as to	02:22:25
4	form.	02:22:25
5	A We had discussions after Mr.	02:22:34
6	Feltman left in 2019 about amending the	02:22:37
7	scope of the assignment to potentially	02:22:51
8	consider approaching the ground lessor and	02:22:54
9	opening up some dialogue.	02:23:05
10	BY MR. BOSCH:	02:23:07
11	Q That was not within the scope of	02:23:07
12	your engagement?	02:23:10
13	A We didn't think so.	02:23:15
14	Q And why did you think that you were	02:23:17
15	not supposed to approach the landlord?	02:23:19
16	A We thought that basically there	02:23:23
17	would need to be -- in spite of the fact	02:23:25
18	that -- here is the problem we had -- and we	02:23:27
19	discussed this earlier in the day.	02:23:31
20	But IWA and the management	02:23:33
21	committee felt that the Camaliers were, as	02:23:35
22	we discussed, dishonest, untrustworthy	02:23:37

Transcript of Troy Taylor

April 6, 2023

282

1 litigious, etc cetera, et cetera, et cetera.

02:23:41

2 And after -- you know, as I

02:23:43

3 mentioned, after you reached out, there was

02:23:44

4 a litigator reaching out. I didn't push

02:23:46

5 them on basically us going to sit down and

02:23:49

6 talk to the ground lessor.

02:23:51

7 I can tell you that in every

02:23:53

8 assignment I've ever had in the past, we

02:23:54

9 would have basically gone to sit down with

02:23:57

10 Mr. Camalier. But the fact that he didn't

02:24:01

11 reach out to me, the fact that you were

02:24:03

12 reaching out to us as a litigator, your

02:24:05

13 letters were very -- looked like they were

02:24:08

14 building a litigation file versus just kind

02:24:12

15 of a business discussion. That had me sit

02:24:14

16 back.

02:24:19

17 However, when we got to 2019, we

02:24:20

18 had been in this thing, like, you know,

02:24:23

19 several years, and my feeling was, you know

02:24:25

20 what, it's time we basically go down and sit

02:24:27

21 down with these guys and have a discussion.

02:24:30

22 And this was I think after the GSA lease

02:24:33

Transcript of Troy Taylor

April 6, 2023

283

1 situation in early 2019 and kind of take 02:24:36
2 everybody's temperature of what do they 02:24:41
3 really want to do, what don't they want to 02:24:45
4 do, not what they were willing to do, not 02:24:47
5 that we were told what they would do, and 02:24:52
6 see if there was any kind of rational 02:24:54
7 business discussion that doesn't involve the 02:24:57
8 lawyers sitting around this table. 02:25:00
9 Q And you understood that you would 02:25:02
10 need to revise the scope of your -- 02:25:03
11 A And -- 02:25:07
12 MS. KROPF: Let him finish his 02:25:07
13 question. 02:25:07
14 Q And you understood that you would 02:25:07
15 need to revise the scope of your engagement 02:25:07
16 on behalf of RSD to allow you to sit down 02:25:08
17 with a landlord to take everybody's 02:25:11
18 temperature? 02:25:13
19 MS. KROPF: Objection as to 02:25:14
20 form. 02:25:14
21 A When we initially got involved, at 02:25:15
22 some point Mr. Feltman insinuated -- and 02:25:17

Transcript of Troy Taylor

April 6, 2023

284

1 again not guaranteed, not written, that the 02:25:20
2 reason he got us involved was that at some 02:25:23
3 point there would be some type of situation 02:25:24
4 that required us to play restructuring 02:25:27
5 adviser, not property manager and that 02:25:30
6 basically if we were going to now put our 02:25:32
7 restructuring hat on, candidly we wanted to 02:25:35
8 get paid. 02:25:39

9 BY MR. BOSCH: 02:25:39

10 Q But as of 2019 that hat was not 02:25:40
11 going to be put on just yet? 02:25:42

12 A That hat was not to be put on 02:25:44
13 because we needed to have the approval of 02:25:45
14 the management committee to have 02:25:48
15 conversations, let alone toss ideas back and 02:25:51
16 forth, et cetera, et cetera. 02:25:53

17 Q So by 2019, after the 02:25:55
18 correspondence that had been engaged with 02:25:58
19 Mr. Barron, you decided that it was time to 02:25:59
20 revisit the scope of your engagement? 02:26:02

21 A More importantly we thought that it 02:26:05
22 was time to go proactively sit down and talk 02:26:08

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
GREENBELT DIVISION**

ROCK SPRING PLAZA II, LLC,

Plaintiff,

v.

**INVESTORS WARRANTY OF
AMERICA, LLC, et al.,**

Defendants.

Civil Action No. 8:20-cv-01502-PJM

**DEFENDANT INVESTORS WARRANTY OF AMERICA, LLC'S REPLY
IN SUPPORT OF ITS BRIEF, PURSUANT TO THE COURT'S MARCH 15, 2023
ORDER, IN SUPPORT OF RECONSIDERATION OF THE APPLICABILITY
OF THE CRIME-FRAUD EXCEPTION**

TABLE OF CONTENTS

ARGUMENT 2

 I. Plaintiff’s Arguments Rely on Proposed Rules and Purposefully
 Ambiguous Legal Standards 3

 II. Plaintiff Has Not and Cannot Demonstrate a Prima Facie Case for Fraud..... 5

 A. Plaintiff Did Not Establish a Prima Facie Case of Fraud in its
 Motion or at the Hearing 6

 B. An Assignment Made Pursuant to Two Different Contracts
 Negotiated and Executed by Plaintiff is Not Fraud. 6

 C. Plaintiff Cannot Rely on RSD’s Election Not to Record the
 Assignment as Evidence of Fraud..... 11

 D. There Was No Fraudulent “Exit Strategy” 13

 1. Consideration of an “Exit Strategy” and Trying to Find a
 Profitable Solution for an Underperforming Asset is not
 Fraudulent. 13

 a. RSD is not a sham 14

 b. An “Exit Strategy” is simply a disposition strategy
 to obtain a positive result. 15

 E. Plaintiff’s Explanations of the Deposition Testimony Are False. 16

 III. If the Court has Determined that Plaintiffs Have Made a Prima Facie
 Showing, IWA is Entitled to an Ex Parte Hearing..... 17

CONCLUSION..... 20

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>CBM One Hotels, L.P. v. Maryland State Dep't of Assessments & Tax'n</i> , No. 2451, Sept. term, 2014, 2017 WL 1788465 (Md. Ct. Spec. App. May 5, 2017)	12
<i>Clark v. United States</i> , 289 U.S. 1, 53 S. Ct. 465, 77 L. Ed. 993 (1933).....	3, 4
<i>In re Gen. Motors Corp.</i> , 153 F.3d 714 (8th Cir. 1998)	19
<i>In re Grand Jury Proc. #5 Empanelled Jan . 28, 2004</i> , 401 F.3d 247 (4th Cir. 2005)	4
<i>In re Grand Jury Proc.</i> , 417 F.3d 18 (1st Cir. 2005).....	4, 18
<i>In re Grand Jury Proc., Thursday Special Grand Jury Sept. Term, 1991</i> , 33 F.3d 342 (4th Cir. 1994)	19
<i>In re Grand Jury Subpoena</i> , 642 Fed. Appx. 223 (4th Cir. 2016).....	18
<i>Haines v. Liggett Group, Inc.</i> , 975 F.2d 81 (3d Cir. 1992).....	19
<i>In re Napster Inc. Copyright Litig.</i> , 479 F.3d 1078 (9th Cir. 2007)	19
<i>In re Richard Roe, Inc.</i> , 168 F.3d 69 (2d Cir. 1999).....	4
<i>Townsend Baltimore Garage, LLC v. Supervisor of Assessments of Baltimore City</i> , 215 Md. App. 133, 79 A.3d 960 (2013).....	13
<i>United Bank v. Buckingham</i> , 301 F. Supp. 3d 547 (D. Md. 2018).....	3, 5, 6
<i>United States v. Zolin</i> , 491 U.S. 554, 109 S. Ct. 2619, 105 L. Ed. 2d 469 (1989).....	<i>passim</i>

Statutes

Maryland Code, § 3-101(a).....11

Maryland Code, § 3-101(d).....11, 12, 13

Md. Code Ann., Cts. & Jud. Proc. § 9–1083

Other Authorities

FRE 5013

FRE 5023

FRE 5033

John W. Gergacz, ATTORNEY-CORPORATE CLIENT PRIVILEGE § 4:16
 (Spring Ed. 2023).....17

Mueller, et al., Federal Evidence § 5.22 Shareholder litigation (4th Ed. 2022)3

Supreme Court precedent provides a narrow crime-fraud exception, which is that the attorney-client privilege protection “does not extend to communications made for the purpose of getting advice *for* the commission of a fraud or crime.” *United States v. Zolin*, 491 U.S. 554, 563, 109 S. Ct. 2619, 2626, 105 L. Ed. 2d 469 (1989) (quotations omitted). IWA did not seek advice *for* a fraud but instead sought to avoid any inkling of fraud by strictly adhering to the governing contract terms, in prudent consultation with its counsel. IWA has never hidden why it made the Assignment and has never hidden behind its lawyers.¹ IWA assigned the Ground Lease to RSD, and then immediately provided proper notice to Plaintiff about the Assignment. Plaintiff ignores that the Assignment was openly made pursuant to two separate contracts, and instead asserts the extraordinary allegation that an established lending institution and well-regarded real estate experts hid behind multiple lawyers from at least four different law firms to commit fraud.

Plaintiff’s contrived characterization of facts does not make the crime-fraud exception any more applicable, nor is it a basis for obtaining the three *privileged* communications (identified by the Court). Obtaining legal advice about what a party may do under a contract and what claims may be filed by parties whose affiliates are already engaged in litigation is not fraudulent. Attorneys are hired to give just that advice. If Plaintiff is able to obtain privileged communications on no more than a standard of “relevance,” this Court will essentially be holding a client cannot evaluate a *compliant* and *legal* course of action to *avoid* falling victim to

¹ Plaintiff argues the number of documents on IWA’s privilege log indicates that IWA is trying to hide behind its attorneys. Plaintiff produced 1,723 documents and withheld an additional 434 documents as privileged. IWA produced 4,713 documents, and IWA identified 1,192 documents as privileged. Both Plaintiff and IWA claim 20% of their documents are privileged. The Court has now reviewed approximately 16% of IWA’s privileged documents and determined that just three are even “relevant”.

its adversary's litigious antics without risking losing its attorney-client protections. That's a problematic precedent to set.

ARGUMENT

Plaintiff has not established a prima facie case of fraud, and there are no factual or legal grounds for ordering the production of IWA's privileged communications to Plaintiff. However, if the Court remains inclined to find that Plaintiff should obtain three of IWA's privileged communications, IWA should be given a fair opportunity to explain that evidence through an *ex parte* hearing.

The Court believes there are three privileged documents that are "relevant" to Plaintiff's fraud claim, yet the Court (i) has not given IWA any insight into why the Court believes the speculative argument of Plaintiff's counsel and gives no credit to the testimony of multiple witnesses and other documentary evidence, which fully refute Plaintiff's fraud claims; (ii) has not explained why it believes that the legal advice of IWA's attorneys as to compliance with contracts (which allow the Assignment) is "relevant;" and (iii) did not at the hearing give IWA an opportunity to respond to Plaintiff's speculative theories about its purported fraud evidence (which theories have been disproven). Indeed, as to the third point, counsel for RSD even raised concerns at the hearing that Plaintiff's counsel had over an hour to argue about the meaning of IWA's documents that neither IWA nor RSD had an opportunity to address. *See* February 16, 2023 Hearing Transcript ("Hr'g Tr.") at 85:1-94:6, attached as Exhibit A. IWA tried to address both that evidence and the privileged documents in its *ex parte* letter, but that letter is not being considered. Now, IWA cannot address the communications without disclosing their content.

Nevertheless, for the reasons set forth below, even if Plaintiff did have some credible evidence on which it could base its fraud claim (and it does not) Plaintiff's legal arguments are still fatally flawed and erroneous.

I. Plaintiff's Arguments Rely on *Proposed* Rules and Purposefully Ambiguous Legal Standards

Plaintiff's chief argument in opposition is premised on *proposed* Federal Rule of Evidence ("FRE") 503, which Congress never enacted and this Court has never relied on to support a crime-fraud exception. (Pl.'s Br. at 5). *Proposed* FRE 503 is neither instructive nor controlling in this case, or in any other case. Yet even if it had been enacted, it is not relevant here because (i) there has been no crime or fraud and (ii) any legal advice was given to interpret a legal contract so that a client could understand its contractual rights and obligations in light of anticipated litigation. See IWA's Brief at 2 (ECF-294). IWA thought it would be sued, and that is exactly what happened.²

As it stands, FRE 501 and 502 control privilege. Rule 501 states that common law governs the claim of privilege, except if rules prescribed by the Supreme Court provide otherwise. "The common law privilege has been codified under Maryland law." *United Bank v. Buckingham*, 301 F. Supp. 3d 547, 552 (D. Md. 2018) (citing Md. Code Ann., Cts. & Jud. Proc. § 9-108 ("A person may not be compelled to testify in violation of the attorney-client privilege.")). Common law also does not recognize the crime-fraud exception in cases, like here, where the communications relate to compliance, rather than avoidance, of the law. See *Buckingham*, 301 F. Supp. 3d at 552 (recognizing that "[a] communication is not privileged if it was made for the purpose of seeking advice or aid in furtherance of a crime or fraud.")).

No rule or case suggested by Plaintiff supports divergence from upholding IWA's privilege. First, Plaintiff's reliance on the ambiguous *prima facie* standard set forth in *Clark v.*

² Plaintiff also relies on other purported authority that is not relevant. For example, Mueller, et al., Federal Evidence § 5.22 Shareholder litigation (4th Ed. 2022) actually discusses the crime-fraud exception from the context of derivative actions and the relevance to the *Garner* rule, which is a different standard.

United States, 289 U.S. 1, 53 S. Ct. 465, 77 L. Ed. 993 (1933) is fatal. Specifically, Plaintiff suggests that “no preliminary finding ... aside from the communication” itself is necessary to warrant implication of the crime-fraud exception. Pl.’s Br. at 6. But, the Supreme Court criticized this standard set forth in *Clark* due to the confusion and ambiguity that it created, as critiqued by legal scholars. *Zolin*, 491 U.S. at 563 n. 7 (1989). In *Zolin*, the Court ultimately concluded that the vague standard set by *Clark* “remains subject to question.” *Id.* at 563; *see also In re Grand Jury Proc.*, 417 F.3d 18, 22 (1st Cir. 2005) (“The process of development is far from over” with respect to the standard.)

Second, *Zolin* did not clarify the “quantum of proof necessary ultimately needed to establish the applicability of the crime-fraud exception.” *Zolin*, 491 U.S. at 564. However, *Zolin* also did not give unbridled discretion to courts to disregard the importance of attorney-client privilege, well-grounded in common law, and to allow scant evidence to pierce this protection. Indeed, the importance of the attorney-client privilege is difficult to overstate, and it is for this reason that the crime-fraud exception “should not be framed so broadly as to vitiate much of the protection [it intends to afford].” *In re Richard Roe, Inc.*, 168 F.3d 69, 71 (2d Cir. 1999).

Finally, the Fourth Circuit has interpreted the crime-fraud exception to mean that it is the client’s knowledge and intentions that are of paramount concern because the client is the holder of the privilege. *In re Grand Jury Proc. #5 Empanelled Jan . 28, 2004*, 401 F.3d 247, 251 (4th Cir. 2005) (finding that the district court abused its discretion because the district court simply could not have concluded that any sort of relationship exists between the allegedly privileged documents and the alleged crime.) That is, the court cannot single-handedly look at the communication and the discovery-seeking party’s interests in the privileged documents. Indeed, “[i]t is the court's duty to consider all of the circumstances in determining whether a sufficient

showing of intent has been made.” *Buckingham*, 301 F. Supp. 3d at 557.

Here, only Plaintiff’s speculative arguments, which are based on the cherry-picking of language from various emails (including from individuals who are not even parties to this case) serve as a basis for IWA’s alleged “sharp trading.” However, as expressed in both briefing and oral argument to date, and further summarized herein, IWA, acknowledges that it consulted with its counsel before making any decisions about the Assignment at issue and has been transparent about its intentions, none of which include engaging in a fraud. Setting aside the public policy interest to allow an attorney an unencumbered ability to provide pre-litigation advice, if IWA is ordered to produce the documents, it would be irreparably harmed by providing attorney work product and privileged communications regarding the defenses that have arisen in this lawsuit. Pairing these facts against the common law and Supreme Court framework set forth above, Plaintiff has not overcome the protections afforded by the attorney-client privilege.

II. Plaintiff Has Not and Cannot Demonstrate a Prima Facie Case for Fraud.

Regardless of what standard the Court decides Plaintiff must follow to demonstrate a prima facie case of fraud, Plaintiff has not met its burden and cannot use contested documents only to meet it. In *Zolin*, the Supreme Court held that the documents at issue in a claim for the crime-fraud exception cannot be used as the sole basis for applying the exception. *See Zolin*, 491 U.S. at 568–72. In other words, Plaintiff cannot rely on the confidential documents themselves to open the door to a fraud claim—the prima facie showing must exist independently of the contested documents. *See id.* “A blanket rule allowing in camera review as a tool for determining the applicability of the crime-fraud exception . . . would place the policy of protecting open and legitimate disclosure between attorneys and clients at undue risk.” *Id.* at 571. It follows that a cause of action for fraud by itself is insufficient to establish the crime-fraud exception. “There is no reason to permit opponents of the privilege to engage in

groundless fishing expeditions, with the district courts as their unwitting (and perhaps unwilling) agents.” *Id.* Thus, the test is not whether there may be documents that may be “relevant to” or that would bolster a fraud theory. Rather, the test is whether the evidence presented by the Plaintiff can independently establish a fraud claim without use of the privileged documents. Moreover, this Court has established that “[f]or an alleged conveyance deemed fraudulent” under Maryland statute or another basis, “to trigger application of the [crime-fraud] exception, the allegations must present sufficient evidence of deception, dishonesty, misrepresentation, falsification, or forgery.” *Buckingham*, 301 F. Supp. 3d at 554. Plaintiff has utterly failed to make such a showing.

A. Plaintiff Did Not Establish a Prima Facie Case of Fraud in its Motion or at the Hearing.

As a starting point, Plaintiff falsely argues that IWA has not responded to its purported evidence, and in response IWA incorporates and reasserts all of its arguments already presented in its Response in Opposition to Plaintiff’s Motion to Compel and Request for In Camera Review of Privileged Documents (ECF-238-2). Although the explanation of Plaintiff’s purported fraud evidence in that brief alone sufficiently refuted Plaintiff’s speculative theories, so now has the testimony of the witnesses. To ignore such case evidence is of course not justice – it is advocacy.

B. An Assignment Made Pursuant to Two Different Contracts Negotiated and Executed by Plaintiff is Not Fraud.

Plaintiff has now deposed eight witnesses, and each witness confirmed exactly what IWA and RSD have been arguing for three years: IWA foreclosed on a leasehold interest and then assigned that leasehold interest to RSD. The Ground Lease and Estoppel Agreement – which both expressly authorized the Assignment – were negotiated and executed by Plaintiff. Upon the Assignment, IWA was released from all obligations under the Ground Lease. There is nothing

fraudulent about doing exactly what two different contracts authorized IWA to do. *See* Deposition of Paul Rubin dated April 7, 2023 (“Rubin Dep”) at 291:16-17, excerpts of which are attached as Ex. 1 to Declaration of Rebecca Davis, which is attached as Ex. B (“The Estoppel Agreement permits the assignment.”); Deposition of Robert Barron dated April 14, 2023 (“Barron Dep.”) at 38:7-10, excerpts of which are attached as Ex. 2 to Ex. B (“And in this situation, the landlord agreed that the lender had the absolute right to assign to a third party and be automatically released.”); Deposition of Troy Taylor dated April 6, 2023 (“Taylor Dep.”) at 80:11-22, excerpts of which are attached as Ex. 3 to Ex. B (“I don’t understand how there could be a fraud claim when in the Estoppel Agreement . . . it says, the absolute right to transfer to any third-party.”); *see also* Barron Dep. 23:15-22.

A number of these witnesses were asked, and denied, that they ever committed *nor intended* to commit any act of fraud. *See, e.g.*, Rubin Dep. 293:6-9 (“I can tell you that Longshore[, the joint venture partner,] had no intent to defraud the landlord when it entered into the joint venture with Rock Springs Drive.”). To the contrary, each of these witnesses explained how they complied with Plaintiff’s contracts, and relied on Plaintiff’s promises to allow the Assignment. As Robert Barron, counsel for RSD explained (and one of three attorneys that Plaintiff seeks to depose, Plaintiff:

[A]greed with the lender in order to induce them to make the loan – if you look at the recital B [of the Estoppel Agreement], the lender said, I will not make the loan unless you let the landlord sign this document. So [Plaintiff] signed this document. And in paragraph 19 [of the Estoppel Agreement], [Plaintiff] said, lender, and I quote, you have the absolute right to assign this lease if you foreclose. Absolute right to any third party. Any third party is what [Plaintiff] agreed to.

Barron Dep. 24:1-11. Based on Plaintiff’s express promises, IWA and RSD, and their respective counsel, negotiated and closed on the Assignment. IWA notified Plaintiff of the Assignment

after it was made, pursuant to the Estoppel Agreement, and Plaintiff's response was to immediately begin setting up its litigation strategy.³

As explained by Mr. Barron—a business attorney with significant experience with real estate asset and financing transactions, corporate acquisition and disposition transactions, and business and debt restructurings—neither the assignment rights in the Estoppel Agreement nor the Assignment itself were wrong or unusual.⁴ Rather, it was Plaintiff's response that was atypical. Mr. Barron exchanged multiple communications with Plaintiff's counsel, William Bosch, prior to the filing of the Complaint, and during the deposition noted, "I've been doing this for 30 years. And for an officer of the court to tell another officer of the court that it's fraudulent conduct, when your client absolutely agreed to permit this transaction, I'm — you know, I'm disappointed. I'm just disappointed." Barron Dep. 27:5-11. Mr. Barron also testified:

So it is very common in my practice for a lender to foreclose. They either put the loan in a shell and have the shell foreclose. Or, you know, if they look at the document and say, look, the landlord has agreed that after we foreclose, we have the absolute right to assign to a third party. And the lease says, this estoppel, you are automatically released from any further liability, except, of course, the liability that you had when you were lender and you were the tenant for that period of time, which I totally get. This is very common in my world, that the landlord, in order to get financing, will tell the lender, look, if this fails, we won't go after you, lender. And so this structure is very common. And what I don't understand is we have -- this provision says they have the absolute right to assign to any third party, and they are automatically released. And in all your correspondence to me, you throw around the "fraud" word in a way that is very odd for a lawyer of your stature, when you have a right given to this borrower, this lender -- that's from the -- from your client that says absolute, and automatically released. So, yes, sir, I have seen this before. I have never seen a landlord renege on such a clear covenant. It's so clear. I've never seen that before in my career. I've done this for 30 years. I've never seen that before.

³ Again, the Estoppel Agreement provides that IWA was only required to provide notice of an assignment to Plaintiff within ten days after the assignment was made, thus again confirming that Plaintiff had no right to object to evaluate any assignee or object to the Assignment. *See* Estoppel Agreement at ¶12.

⁴ Mr. Barron's professional and community activities and accomplishments (of which there are many), are presented in Ex. 4 to Ex. B.

Barron Dep. 25:1 - 26:13. Mr. Barron also then explained his responses to Mr. Bosch's demands for information, which are the same communications that Plaintiff has repeatedly argued are evidence of fraud and subterfuge, stating, "[O]ne of the disagreements that you and I had is that you assume that if someone does not answer a question that you ask, it is by definition either in bad faith or fraud." Barron Dep. 345:18-22.

As to Mr. Bosch's own conduct and Plaintiff's demands for information, which Plaintiff had no right to request or receive, Mr. Barron noted:

One of the sad things about this engagement, this interaction that I had with you with letters is that you presuppose that if I exercise that discretion and choose not to answer, you call it fraud. And with respect, I bet if I followed you around every day and watched lawyers ask you questions, with respect, I could bet you a dollar that you'd choose, in your discretion, not to answer questions. And with respect, if those lawyers called your conduct fraudulent, you might get a little aggravated. So with respect, just because you have the right to ask a question doesn't mean you have the right to require an answer.

Barron Dep. 257:1-16. *See also* Barron Dep. 362:1-8 (stating that the communications from Mr. Bosch were "litigation setup letters[s].") Mr. Barron also testified:

[L]ife does not happen in a vacuum, and we're dealing with letters written by the head of a major, big law firm, the head of litigation, from a landlord whose affiliate has been in years in litigation with this same company. And so is it reasonable for the parties to not trust and be concerned with litigator letters? Absolutely. It's reasonable to be concerned and not to give them anything that you don't have to because we've already gone through -- not we. But they've already gone through litigation with you. I think it's incredibly reasonable. In fact, if you were counsel, you would be giving the same legal advice. That's what so sad about this.

Baron Dep. 346:22 - 347:15.

Mr. Barron's testimony is consistent with IWA's concerns dating back to at least 2016, that Plaintiff was litigious and would file a lawsuit no matter what course of action IWA took to find a profitable solution for the Ground Lease. Accordingly, IWA sought legal counsel to interpret and comply with the contracts. Moreover, consistent with what the documents, and also the privilege log, reflect, IWA sought counsel to evaluate the potential claims that IWA felt

Plaintiff would inevitably bring, including an obvious claim for fraudulent conveyance.

David Feltman, IWA's corporate witness, testified that IWA analyzed fraudulent conveyance concerns with respect to the Ground Lease as a litigation concern well in advance of conceiving of the Assignment, and then again at the time of the Assignment. Feltman Dep. 290:3-291:22. Seeking such advice was a reasonable business decision because IWA anticipated litigation, and the risk of litigation with the Camalier family was a real concern that was discussed with IWA's joint venture partner. *See* Deposition of David Feltman dated March 16, 2023 ("Feltman Dep.") 350:1-22, excerpts of which are attached as Ex. 5 to Ex. B. ("I discussed that with Troy [Taylor], and the fact that the Camaliers were litigious and that this was clearly a possibility. . . generally, I was just looking at what had happened on [Rockledge] and saying, hey, you know, these guys were litigious, and there's a possibility that they're going to sue.")

As IWA has also repeatedly explained, it is beyond dispute that Plaintiff's litigious behavior also had an impact on IWA's willingness to share information. *See* Barron 66:5-12. "My understanding was a combination of the lack -- severe lack of trust with the landlord based upon this other litigation, concern that the landlord would not honor the terms of the lease. And so the concept of getting beyond the time period for -- to try to attack the agreement based upon transfer." Troy Taylor further testified:

One of the things -- when we first got brought into this, we were told that the Camaliers were very litigious. I knew there was existing litigation going on. Didn't know anything about the specifics. I knew there was existing litigation and I knew that there was -- that at least IWA's perception was that the Camaliers were very litigious I took that to say, okay. And after the assignment, what happened was that Mr. Bosch, you were the one that initially reached out to Robert Barron. And in my 25-plus years of experience, I've never seen any first chair litigator be the first person to respond in what should be a commercial business situation. So it made me basically say, okay, I understand now why my joint venture partner thinks that these folks are litigious in nature, because why would the litigator be responding? I mean, you know, it kind of muddied the waters. So it made me think that basically that the Camaliers were not interested in a real conversation; otherwise, they would

have called directly, they would have had maybe one of your real estate partners call, but the fact that it was a litigator reaching out, that sent red flags to me. So in the back of my mind, it gave more credence to the fact of what IWA had been telling me. But I didn't -- but just to finish, I didn't know any specifics, I didn't know -- but it made me understand that, okay, these guys approach everything from a litigation angle versus from what I call a business angle. I said it reinforced to me that basically what my joint venture partner was saying had some credence. I typically have partners and clients that have preconceived notions that are often conspiracy theories that they've worked up in their minds that tend not to be reality, but in this particular case, it reinforced what their reality was telling me.

(Taylor Dep. 74:6-78:16). Ultimately, the litigation concerns that multiple witnesses testified about is exactly what transpired. Barron testified:

[N]otwithstanding that [Plaintiff] coveted it, to let [IWA] do this, [Plaintiff is] now going to sue [] for fraudulent conveyance, which is exactly what everyone was concerned, that these people do not operate in good faith. They will not honor the covenant they have in the plain language of the lease. But instead, they're litigious. And bingo, on June 6th, 2019, you came out and did it. And here we go.

Barron Dep. 380:20 - 381:7.

In summary, IWA anticipated litigation and the potential claims that Plaintiff would file, which formed its decision-making before and after the Assignment. Disclosure of that analysis, or communications relating to the possibility of those claims, including any steps taken to avoid or defendant against such claims, is not contemplated under the crime-fraud exception or Maryland law.

C. Plaintiff Cannot Rely on RSD's Election Not to Record the Assignment as Evidence of Fraud

Plaintiff's argument that IWA's election not to record the Ground Lease is evidence of fraud is completely without merit. Maryland Code, § 3-101(a) provides that no "estate above seven years . . . may pass or take effect unless the deed granting it is executed and recorded." However, Maryland Code, § 3-101(d) then goes on to spell out the following:

If a lease required to be executed and recorded under the provisions of subsection (a) of this section is executed but not recorded, the lease is valid and fully effective both at law and in equity (i) between the original parties to the lease and their

personal representatives, (ii) against their creditors, and (iii) against and for the benefit of any other person who claims by, through, or under an original party and who acquires the interest claimed with actual notice of the lease or at a time when the tenant, or anyone claiming by, through, or under the tenant, is in such actual occupancy as to give reasonable notice to the person.

Md. Code Ann., Real Prop. § 3-101(d) (West). In other words, pursuant to Section 3-101(d), an executed, unrecorded ground lease interest for a duration of more than seven years is “valid and fully effective both at law and in equity” between the parties to the ground lease interest, against their creditors, and against any other person who has actual notice of the ground lease interest, or reasonable notice of the ground lease interest based upon the circumstances. As such, it is not uncommon for parties to forego assigning subsequent conveyances.

In this particular situation, the original Ground Lease was already recorded in the Land Records - IWA’s purchase of the Leasehold was also recorded in the Land Records through the Trustee’s Deed of Assignment. *See* Ex. C. Thus, any potential third party would be put on notice that the land was subject to the 99-year Ground Lease and that IWA acquired the Leasehold in 2012. In addition, Plaintiff was specifically advised of the Assignment through a notice sent on the exact date of the Assignment, and thus would not be impacted by any election not to record. *See* Barron Dep. 232:1-7. Also, the Assignment was not hidden from Montgomery County, and in fact RSD called Montgomery County to discuss whether the tax bill could be changed without recording the Assignment. Rubin Dep. 265:3-22.

Nevertheless, IWA considered whether recording the Assignment was legally required. RSD’s counsel investigated the requirement to record the Assignment, and determined that recording assignments was not customary in Maryland, and that larger commercial owners typically do not record an assignment of a ground lease because it attributes a tax. Barron Dep 325:1-327:9; *see, e.g., CBM One Hotels, L.P. v. Maryland State Dep’t of Assessments & Tax’n*,

No. 2451, Sept. term, 2014, 2017 WL 1788465, at *1 (Md. Ct. Spec. App. May 5, 2017) (noting in tax dispute the recorded documents, included *inter alia* the Memorandum of Lease, but did not include assignment of ground lease between affiliated parties, Marriott Corporation and Courtyard by Marriott); *see also Townsend Baltimore Garage, LLC v. Supervisor of Assessments of Baltimore City*, 215 Md. App. 133, 145, 79 A.3d 960, 967 (2013) (distinguishing that recorded documents establish title or record ownership, while unrecorded documents show a contractual ownership of the property interests). Further still, the decision not to record the Assignment was implicitly approved by Wilkes Artis, Chtd. (“Wilkes Artis”), a law firm in the Washington, DC region that focuses on real estate tax issues (and is the firm at which Plaintiff’s representative, Charles A. Camalier, III is a Shareholder). Wilkes Artis represented RSD after the Assignment in a tax appeal, and knowing RSD was the tenant and that IWA was still identified as the taxpayer, it never advised RSD to record the Assignment. *See Taylor Dep.* 258-261.

But again, any indicia of *fraud* is belied by IWA providing notice of the Assignment on the same day that the Ground Lease was conveyed, thereby satisfying any notice considerations of Section 3-101(d). And deciding not to record a document (in this case, an Assignment of an already recorded Ground Lease) that is not *legally* required to be recorded, is not fraudulent.

D. There Was No Fraudulent “Exit Strategy”

1. Consideration of an “Exit Strategy” and Trying to Find a Profitable Solution for an Underperforming Asset is not Fraudulent.

Plaintiff has consistently relied on rhetoric it has created by combining cherry-picked language from multiple emails to argue that RSD is a sham entity created as an exit strategy for a worthless asset. There is no merit to these allegations. What IWA did is create a partnership that it hoped would lease up an underperforming asset so that it could sell it.

a. RSD is not a sham.

As a starting point, the inflammatory allegation that RSD is a “sham” was dispelled long ago. IWA has repeatedly explained the purpose of RSD - RSD was NOT formed “so that IWA would no longer have responsibility for fulfilling tenant’s financial obligations under the Ground Lease.” Feltman Dep. 127:8-12. Rather, it was formed because IWA “had been unsuccessful at leasing it up. [IWA] thought that the Algon folks could do, frankly a better job.” Feltman Dep. 127:16-22. Moreover, “by 2017 IWA’s resources were constrained and IWA was cutting staff, and the creation of a joint venture was a way to add more resources.” Feltman Dep. 128:1-6. Furthermore, IWA:

[W]anted a party who was incentivized properly to add value. And [IWA] knew that that skill set existed within Algon. And that Algon also had strong capital markets relationships so that, to the extent we were able -- they were able to identify a tenant and tenant the property, that they could, through their capital markets relationships, find ways to finance the cost associated with that. And ultimately sell the property, once it had been leased up and improved.

Feltman Dep. 128:13-22.⁵

Witness after witness has confirmed what Defendants have been saying for three years. Nevertheless, if the Court remains inclined to rely on Plaintiff’s disproven “sham” argument as a basis for allowing Plaintiff to review privileged communications, IWA again asserts that it is entitled to an *ex parte* hearing to address the meaning of any documents that are relevant to this unsupportable sham theory.

⁵ Barron 60:17-61:1 (“Algon – Troy Taylor and Paul Rubin, Algon is – has the – a lot of experience trying to work out situation and try to find win-win situations for transactions that need that professional input. And he’s got-they have tremendous experience in troubled assets.”)

- b. An “Exit Strategy” is simply a disposition strategy to obtain a positive result.

Plaintiff has relied heavily on an email sent on July 8, 2016, more than a year before the Assignment, in which an accountant asked whether IWA had an “exit strategy” for the Ground Lease. First, the person who sent the email is irrelevant to the transaction at issue, as he was not an employee of IWA, and was instead an employee of a third party. Moreover, he was an accountant that had no decision-making power with respect to the Property. Second, an “exit strategy” is not a negative event, but is a positive outcome. It is simply a disposition, and IWA views it as “the sale of a property.” Feltman Dep. 142:4-8. *See also* Deposition of Matt Pithan Dep. 38:18-22, attached as Ex. 6 to Ex. B (“My understanding of exit strategy is the plan to sell an asset.”). As Mr. Feltman further explained, IWA was always thinking about exit strategies because:

IWA wasn't in the business of being a long-term owner of real estate. And generally in real estate the benefits, the economic benefits, are both cash flow during the term of ownership but also the residual value and benefiting ultimately from the sale of the property, appreciation of the property and residual value. So when we talk about exit, you know, we're really talking about disposition of a property at the end of its -- whatever its appropriate life cycle is based on maximizing value at that time.

Feltman Dep. 684:8-22.

There was no exit strategy being considered in 2016, beyond leasing up and then selling the Property. Feltman Dep. 222:1-223:4. In fact, IWA never had a disposition strategy, or “exit strategy” for the Property, and the Assignment was not in itself an “exit strategy.” *See* Feltman Dep. 182:4–186:15. Rather, “to the extent [the Assignment] was a disposition by IWA . . . it was just one step in what needed to occur to execute what we would think of as a disposition exit strategy, so that RSD could then sell the property and monetize the proceeds.” 186:8-15.

There is simply nothing about any “exit strategy” referenced in any communication that was wrong, and certainly nothing fraudulent.

E. Plaintiff's Explanations of the Deposition Testimony Are False.

Despite Plaintiff's attempts to recharacterize witness testimony in this case, each witness confirmed that there was no fraud, and certainly no fraudulent intent related to the Assignment. Yet, Plaintiff still asserts a litany of false statements in its Opposition that if, the full transcript is considered, are easily disproven. These false statements are identified below, and the actual testimony of the witnesses, in context, is attached hereto.⁶ The testimony speaks for itself, and Plaintiff's attempts to restate that testimony should be disregarded.

i. No witness confirmed that the Assignment was for purposes of a simple “walkaway” and there has never been any discussion as to using RSD as an “exit strategy” to walk away from the Ground Lease. Indeed, Mr. Feltman testified that the Assignment was not done so IWA could avoid responsibility for fulfilling any obligations under the Ground Lease. Feltman Dep. 127:8-15. Mr. Barron actually testified that he could see a hypothetical scenario where RSD would have to give back the interest in the Ground Lease to the Camalier entity, but he also testified that he never had any discussions with IWA or anyone else about that. *See* Barron Dep. 78:11-85:4. Mr. Taylor has testified that he understood that RSD would be funded for as long as it took to get a resolution, which is the exact opposite of a belief that the parties orchestrated this transaction as a walkaway. *See* Taylor Dep. 223:2-21.

ii. The three-year statute of limitations had no bearing on the formation of RSD, nor has it had any relevance to RSD's ownership of the Property. Also, Mr. Feltman did not testify that he was trying to get past the three-year statute of limitations to force a sale, or that he planned on “putting the screws to the landlord.” Rather Mr. Feltman testified that there was actually, in a draft term sheet, a partnership term of three years, and Mr. Feltman believed it was

⁶ If the Court requests, IWA will also provide full transcripts of all depositions taken in the case.

sufficient time to get the Property leased up and sold. Feltman Dep. 273:10-22. Mr. Feltman also testified: “I [thought] at that point, the litigation risk would go away because we’d be beyond the fraudulent transfer date, and also our expectation was that there would be leasing activity, and by then the property would be in a position to be sold.” Feltman Dep. 406:15-22. Nowhere does Mr. Feltman’s statement suggest he intended for RSD to walkaway from the Ground Lease after the statute of limitations period. Mr. Feltman’s testimony also mirrors the testimony of Mr. Barron, who did not know the statute of limitations was three years for fraudulent conveyance but knew that there was distrust with landlord, which is why certain provisions were in the first draft of the term sheet, but were ultimately removed by IWA anyway. Barron Dep. 197:8-198:8.

iii. Also, as discussed above, RSD did not share information that it was not required to share with Plaintiff because Plaintiff made clear very quickly that it was setting up a lawsuit. IWA did not want to share information with Plaintiff because it was already in a lawsuit with Plaintiff’s affiliate and it also anticipated getting sued by Plaintiff.

iv. Finally, IWA has never denied that it retained counsel to review and draft documents, which is established by the thousands of documents already produced and the parties’ privilege logs. Obtaining legal advice through attorneys is not fraud. Similarly, asserting attorney client privilege over conversations between attorneys and clients does not demonstrate fraud.

III. If the Court has Determined that Plaintiffs Have Made a Prima Facie Showing, IWA is Entitled to an Ex Parte Hearing

Plaintiff incorrectly states that “Courts have broad discretion to determine whether a privilege is properly asserted.” Pl’s Br. at 6. Seemingly, Plaintiff has confused the lower threshold for the in camera review of privileged documents and the standard for determining whether to uphold that privilege. *See* John W. Gergacz, ATTORNEY-CORPORATE CLIENT

PRIVILEGE § 4:16 (Spring Ed. 2023) (*Zolin* “integrated an in camera inspection of materials with an initial showing that would be *less than* that required to establish the crime-fraud exception.”) (emphasis added). The standards are not the same, nor are they similar because the intrusion upon the confidentiality of the attorney-client relationship is much greater in the latter. *Zolin*, 491 U.S. at 572. A lesser evidentiary showing is needed to trigger an in camera review than is required to ultimately overcome the privilege. *Id.*; see also *In re Grand Jury Proceedings*, 417 F.3d at 22 (Noting that the standard for in camera review requires a lesser evidentiary showing than what is ultimately needed to pierce the privilege). Thus, while the Court has more discretion in determining whether to conduct an in camera review, which it exercised in this case, it does not have the same liberal discretion in its determination to apply the crime-fraud exception.⁷

What is exceptionally troubling here is that IWA has not been afforded an opportunity to refute Plaintiff’s assertions of fraud or the Court’s determination that the contested documents “might be relevant.” ECF No. 290. There remains a due process concern in this case, including as to how the evidence was addressed at the February 16, 2023, hearing. *See* Ex. A. Indeed, even then the Court did not give either IWA or RSD an opportunity to address Plaintiff’s spin on purported evidence, and the Court has thus far not given any weight to what the actual authors of that purported evidence have said Plaintiff’s purported evidence means.

To ignore the explanations of the evidence by the very individuals that drafted, reviewed, or used the actual evidence invites error. This is in part because if the Court concludes that Plaintiffs have made a prima facie showing, then the burden shifts to IWA to refute such showing.

⁷ Even the authority cited by Plaintiff makes clear that the discretion the trial judge has as to whether privilege applies is still limited by the framework of binding Supreme Court and Fourth Circuit precedent. *See In re Grand Jury Subpoena*, 642 Fed. Appx. 223, 227 (4th Cir. 2016).

In re Grand Jury Proc., Thursday Special Grand Jury Sept. Term, 1991, 33 F.3d 342, 351 (4th Cir. 1994). This burden shifting standard contemplates the opportunity for rebuttal. *Id.* (“The crime-fraud standard does seem to contemplate the possibility that the party asserting the privilege may respond with evidence to explain why the vitiating party’s evidence is not persuasive”); *see also In re Gen. Motors Corp.*, 153 F.3d 714, 716 (8th Cir. 1998) (“This being a civil case, the district court may not, however, compel production without permitting the party asserting the privilege, to present evidence and argument”); *Haines v. Liggett Group, Inc.*, 975 F.2d 81, 97 (3d Cir. 1992) ([the] “importance of the privilege, ... as well as fundamental concepts of due process require that the party defending the privilege be given the opportunity to be heard, by evidence and argument, at the hearing seeking an exception to the privilege.”); *see also In re Napster Inc. Copyright Litig.*, 479 F.3d 1078, 1093 (9th Cir. 2007) (“[I]n civil cases where outright disclosure is requested[,] the party seeking to preserve the privilege has the right to introduce countervailing evidence”). Even Plaintiff admits the Court should allow for a process for the Parties to submit additional information for the Court to make a determination that a prima facie case has been shown. Pl.’s Br. at 8. (“Notably, if the Court determined that the documents reviewed in camera did not make the prima facie showing, it could have requested additional evidence from Plaintiff”).

Given the forgoing, and the need to address Plaintiff’s “prima facie case” against the documents the Court has selected, if the Court concludes that Plaintiff has met its burden, IWA is entitled to an ex parte hearing to present evidence to the contrary. Moreover, to the extent that Plaintiff is arguing that IWA has had an opportunity to address the three documents that the Court is considering releasing, IWA asserts that it attempted to do so, and that such attempt was rejected by the Court. The Court instead directed the parties to brief the issue to give Plaintiff a chance to respond, which altogether eliminated IWA’s ability to address the documents at all.

CONCLUSION

IWA did only what Plaintiff agreed it could do, in not one, but two different contracts. Adhering to the terms of a negotiated contract is not fraud, and absent fraud, there is no basis for ordering that Plaintiff is entitled to review IWA's privilege documents under the crime-fraud exception. Accordingly, given the absolute irreparable harm that the Court's release to Plaintiff of IWA's privileged documents will have on Defendants, given the absence of substantive and procedural due process in the Court's manner of stripping IWA of its attorney-client privilege, and given the increased probability of reversible error embedded in the Court's proposed release of IWA's attorney-client privileged documents, IWA respectfully requests that the Court reconsider and reverse its position as to the release of IWA's privileged communications.

However, if the Court remains intent on allowing Plaintiff to obtain the three documents containing IWA's privileged information, then the Court should order the release of the three documents rather than release the documents itself, as not even the cases cited by Plaintiff allow or even suggest such a result, and give IWA sufficient time, as allotted by established procedures, to pursue whatever relief IWA may seek from the U.S. Court of Appeals for the Fourth Circuit. IWA requests that the Court not limit IWA's right to any of its remedies, as to timing or election.

DATE: April 25, 2023

Respectfully submitted.

SEYFARTH SHAW LLP

By: /s/Rebecca Davis
Rebecca A. Davis, Bar No. 23183
1075 Peachtree St., N.E., Ste 2500
Atlanta, GA 30209
Telephone: (404) 885-1500
rdavis@seyfarth.com

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ROCK SPRING PLAZA II, LLC,

Plaintiff,

v.

INVESTORS WARRANTY OF
AMERICA, LLC, et al.,

Defendants.

Civil Action No. 8:20-cv-01502-PJM

CERTIFICATE OF SERVICE

I hereby certify that on April 25, 2023, I electronically filed the foregoing **DEFENDANT INVESTORS WARRANTY OF AMERICA, LLC'S REPLY IN SUPPORT OF ITS BRIEF, PURSUANT TO THE COURT'S MARCH 15, 2023 ORDER, IN SUPPORT OF RECONSIDERATION OF THE APPLICABILITY OF THE CRIME-FRAUD EXCEPTION** via the Court's CM/ECF system, which will automatically provide electronic service copies to all counsel of record.

William Bosch, Esq. Alvin Dunn, Esq. Katherine Danial, Esq. Pillsbury Winthrop Shaw Pittman LLP 1200 Seventeenth Street, N.W. Washington, DC 20036 william.bosch@pillsburylaw.com alvin.dunn@pillburylaw.com katherine.danial@pillsburylaw.com <i>Attorney for Rock Springs Plaza II, LLC</i>	Sara E. Kropf, Esq. Kropf Moseley PLLC 1100 H Street NW, Suite 1220 Washington, DC 20005 sara@kmlawfirm.com <i>Counsel for Defendant Rock Springs Drive LLC</i>
--	--

Dated: April 25, 2023

By: /s/ Rebecca A. Davis
Rebecca A. Davis, Bar No. 23183

EXHIBIT A

85

1 **MS. KROPF:** Your Honor, just two very short
2 preliminary matters. With respect to the ex parte process,
3 you had said we should submit the documents in ten days so
4 should we submit them in hardcopy to chambers or
5 electronically?
6 **THE COURT:** No, hardcopy. I mean, you do the work.
7 **MS. KROPF:** Sure. We'll kill the trees on our side.
8 **THE COURT:** Right.
9 **MS. KROPF:** And then, Your Honor, if you do have any
10 inclination to find the crime-fraud exception, we would ask
11 for an ex parte hearing before that happens so we can address
12 any of those issues and a chance to brief them, for Your Honor
13 to identify just to us what documents you think might fit into
14 it and why -- or maybe not why, and allow us to brief it and
15 have an ex parte hearing about them before any of them be
16 released to the plaintiff.
17 **THE COURT:** Okay in part. I'm not sure how it
18 becomes ex parte. That's where we are.
19 **MS. KROPF:** Well, in order to discuss the issue we'd
20 have to be talking about the substance of the e-mails which
21 are privileged. And so we certainly couldn't do that with
22 plaintiff's counsel there. So we'd need it to be an ex parte
23 hearing until Your Honor decides that for some reason the
24 privilege is not there and they're entitled to see it. It
25 would be impossible to address it otherwise.

Nadine M. Bachmann, RMR, CRR - Federal Official Court Reporter

86

1 **THE COURT:** All right, well are you agreeable to
2 that, Mr. Bosch?
3 **MR. BOSCH:** No, Your Honor. I'd like to know. I
4 think if the Court concludes that privilege does not apply or
5 there's an exception, that's for the Court and the Court's
6 discretion. It's not something that only one party gets to
7 advocate for.
8 **THE COURT:** That's a little unusual, I guess. If I
9 make a determination that there's a basis to look at the
10 communications, and not necessarily conclude that they are
11 elements of fraud, I'm not sure how you can come in ex parte
12 and try and tell me you get -- I don't see that as part of the
13 procedure to tell me why I shouldn't release them.
14 **MS. KROPF:** Well, Your Honor, I think we should be
15 permitted -- if you're going to look at these e-mails and for
16 some reason decide based solely on e-mails without any
17 testimony, without having heard from anyone -- evidentiary,
18 not just arguments of counsel -- that we should be permitted
19 to come in ex parte to explain those documents through it --
20 we can do it by having witnesses testify through them, but our
21 concern -- I see the hesitation on your face, Your Honor.
22 **THE COURT:** Well, I'm just trying to think through
23 practically how this works.
24 **MS. KROPF:** Well, I think the problem, Your Honor,
25 is what's happened here today is that Mr. Bosch stood up for

Nadine M. Bachmann, RMR, CRR - Federal Official Court Reporter

87

1 half an hour and went through several documents and provided
2 his personal characterization of why those documents appear to
3 be fraudulent. And Your Honor's made several statements during
4 that argument of yes, it does look suspicion or it looks like
5 it is unusual.
6 And our concern is one, we haven't had a chance to do
7 that and we would like the opportunity and we can do that
8 today, but you're taking their representation without
9 evidence, without any depositions and without any witnesses to
10 establish or considering establishing crime fraud. And if
11 that's going to happen, Your Honor, we should be permitted to
12 provide evidence to you ex parte of what the lawyers were
13 saying. And it shouldn't simply be counsel's representation of
14 here are the facts and this equates to fraud. I mean, that is
15 putting aside the seriousness of the allegations against
16 lawyers, well-regarded lawyers, putting that aside it's an
17 evidentiary issue. It's not a matter to be decided based on
18 what counsel says these documents mean.
19 And our concern is that if Your Honor sees something that
20 you're concerned about, that you think might look
21 questionable, we need to be able to respond to that. And the
22 only way we can respond effectively is to have the lawyer or
23 the client explain it --
24 **THE COURT:** Well, let's talk about what you're
25 accomplishing by that. I look at the documents -- first of

Nadine M. Bachmann, RMR, CRR - Federal Official Court Reporter

88

1 all, it may be academic because I don't find any fraud.
2 **MS. KROPF:** Then we don't need that.
3 **THE COURT:** I find what I call sharp dealing at
4 most. All right, but I find something and you're saying you
5 should come in and ask me to reconsider whether I should
6 reveal it to plaintiff because you have an alternate
7 explanation; is that right?
8 **MS. KROPF:** Yes, Your Honor.
9 **THE COURT:** The problem with that is that I'm not
10 saying necessarily that it does conclusively demonstrate one
11 thing or another. They would have to argue that it does and
12 then you would respond I think ordinarily it doesn't. Suppose
13 you give me an alternate explanation. Is that going to
14 effectively ask me to reconsider whether I should release it
15 or not? And I assume you'll come up with something that will
16 make it not implausible as to why you don't think it should be
17 released, but I look at it and think well, but it probably
18 should be. Not that I make a conclusion about it that it
19 definitely demonstrates fraud if it even gets to that point,
20 but simply that it's out there for argument.
21 **MS. KROPF:** Except, Your Honor, this isn't the
22 question of law. So this is a question of fact. This is a
23 question of whether or not they've met -- if you get to the
24 second stage. I agree, Your Honor. We can look at these
25 documents and I think that's what will happen and find that

Nadine M. Bachmann, RMR, CRR - Federal Official Court Reporter

89

1 there's nothing out of the ordinary here. There are clients
2 talking to their lawyers about what to do about a complicated
3 issue. That is normal. That is not fraud. Just because they've
4 alleged a fraudulent conveyance does not mean that --

5 **THE COURT:** No, I accept that.

6 **MS. KROPF:** So I think it's quite possible we never
7 get to this. But if Your Honor -- and we're just at that first
8 stage of the in camera review. If from that in camera review
9 you are inclined to believe plaintiff's characterization that
10 there might be evidence of fraud, we're entitled to counter
11 that with evidence. That would be an evidentiary hearing and
12 that's what I've seen other Courts do if they're going to do
13 crime fraud.

14 There's two steps here. It isn't just you do an in
15 camera review, you think something looks suspicious, ergo it
16 gets released to plaintiff. I believe there would need to be
17 an evidentiary hearing on whether the crime-fraud exception
18 applies.

19 **THE COURT:** Have you got any precedent for that
20 practice? It's really complicating this action. We are just
21 off into mini-hearing after mini-hearing.

22 **MS. KROPF:** Well, they are asking for an absolutely
23 extraordinary relief. This is to waive -- they want the
24 attorney/client privileged communications, Your Honor. This is
25 not regular discovery. This is not a minor issue. What they

Nadine M. Bachmann, RMR, CRR - Federal Official Court Reporter

90

1 are --

2 **THE COURT:** No, I'm asking a specific question
3 because I've never had this come up where they're asking me to
4 make an in camera review having made whatever you call it, a
5 prima facie showing or the first threshold is passed and you
6 saying before I make any determination, I need to hear from
7 you ex parte as to whether I should disclose it or not. I'm
8 not going to make a final determination about whether
9 something is or is not relevant to fraud. It would be out
10 there and then you can argue against it.

11 **MS. KROPF:** So maybe I just misunderstood what Your
12 Honor proposes to do. So we will provide the documents to you.
13 We will do an in camera review and what will happen next?

14 **THE COURT:** Well, let me see whether it does end up
15 being academic anyway, then I'm not going to release anything.
16 I think maybe -- well, let's see where we are at that point. I
17 don't want to make a definitive statement if I'm not going to
18 find anything. There's no point in setting up ground rules.

19 I'm a little resistant, not finally, to your suggestion
20 that there needs to be an ex parte presentation by you with
21 witnesses as to why I shouldn't release certain information. I
22 mean, I can make certain determinations myself, but let's
23 reserve on that. I don't need to get there until I find that
24 there really is a document that's going to raise an issue.

25 **MS. KROPF:** That's fine, Your Honor.

Nadine M. Bachmann, RMR, CRR - Federal Official Court Reporter

91

1 **THE COURT:** Let's just say you produce them and let
2 me see where I come out, then we'll revisit.

3 **MS. KROPF:** That's fine. And the only other thing
4 I'll say just for the record, Your Honor, is you made some
5 statements this morning that raised some concerns for us as to
6 whether or not you're going to listen to our side.

7 **THE COURT:** What? I'm sorry.

8 **MS. KROPF:** Whether or not you're going to listen to
9 our side. In other words, plaintiffs have characterized
10 certain facts or certain e-mails as evidence of fraud and Your
11 Honor said this morning that they're right. It looks like this
12 is suspicious or unusual. Your Honor, we have not presented
13 our case.

14 **THE COURT:** I understand.

15 **MS. KROPF:** I know, but I would just like to put
16 briefly on the record, we have not presented our case. They
17 have not deposed a single witness. All of these e-mails about
18 exit strategy, all of these things, let them depose the person
19 and then come to you and say, this is evidence of fraud. We're
20 just concerned, Your Honor, that the path you headed down this
21 morning saying "I'm very close to this, I'm very close to
22 making this decision" --

23 **THE COURT:** Not about fraud, not about fraud. I
24 never said that. I think there's evidence out there from which
25 they can argue whatever they want to argue. Of course you're

Nadine M. Bachmann, RMR, CRR - Federal Official Court Reporter

92

1 going to be heard. I know you haven't been heard on that.

2 **MS. KROPF:** I just want to make sure Your Honor --

3 **THE COURT:** No, I'm prepared to hear from you on
4 your motion, but my comment really went to this issue. How
5 much more do you expect to get out of these documents anyway?
6 To the extent that you're alleging that there was an exit
7 strategy, that you were trying to keep it secret, it's all
8 there. That's what he talked about. That you didn't record the
9 deed and then all of those things are suspect. Are they
10 fraudulent? Not necessarily, maybe not at all. It's just as I
11 say, a sharp trading, sharp strategy. That's what you've done
12 and that's what I say. But it was more going to the issue of
13 what more do you expect me to look at other than what you've
14 said here now? That, in fact, this is what -- this is why we
15 are not recording the deed because we're going to give rise to
16 what, something or other on plaintiff's part.

17 **MS. KROPF:** We just want to make sure that Your
18 Honor --

19 **THE COURT:** No, I haven't conclusively decided it,
20 but I want to be very clear: My comments went solely to the
21 issue of do I even need to look at this document beyond. To
22 the extent that you, plaintiff, want to make the argument,
23 you've made it here. Have you conclusively won it? No.

24 **MS. KROPF:** And we would get to respond with
25 evidence. When we get to the fraud issues, Your Honor, the

Nadine M. Bachmann, RMR, CRR - Federal Official Court Reporter

93

1 concern is that would be a fact-finding mission. That would be
2 you sitting in your fact-finding role and we would be able to
3 put on evidence, not arguments of counsel; witnesses,
4 documents, and have the trial on those matters.

5 **THE COURT:** I don't think you -- maybe we
6 misapprehend what happens at this point. I don't make a
7 finding that there's fraud based on what I review in your
8 documents. I mean, I might find some further questionable
9 practices let's say. I don't make that finding. All I say is
10 it's out there to be argued. Plaintiffs get a chance to see
11 it, you get a chance to oppose it. But I don't make that
12 finding as a finder of fact. I suppose it's a tentative
13 finding that I make in my discretionary authority that there's
14 a reason to pierce the privilege because there looks like
15 there's some badge of fraud here. That's all I'm making, but
16 it's not definitive. It's not final. It's just a matter of
17 putting it out there in the pool for discovery.

18 So I think there's a subtle, but important difference
19 here that I am not finding finally that there's fraud. And
20 frankly, I'm not sure that there will be. I just don't see it.
21 As I say, there's issues, things that defendant IWA and RSD
22 did there that are questionable. But they're not necessarily
23 illegal and they're not fraudulent necessarily. Could be, I
24 don't know.

25 **MS. KROPF:** And that's exactly what we want to make
Nadine M. Bachmann, RMR, CRR - Federal Official Court Reporter

94

1 sure before Your Honor makes any decisions on that, we
2 actually get to respond to it. Because --

3 **THE COURT:** Well, let me see whether it isn't an
4 academic point anyway. I may not find anything that requires
5 disclosure.

6 **MS. KROPF:** Understood, Your Honor.

7 **THE COURT:** Where are we now then? We're at 7?

8 **MS. KROPF:** Number 7, Your Honor, which is Rock
9 Springs Drive's motion to quash the deposition subpoena on our
10 lawyer, Robert Barren. And I believe we've narrowed the issue
11 considerably. The plaintiffs are no longer arguing that
12 there's not a common interest between IWA and between Rock
13 Springs Drive, so that eliminates one whole category of
14 topics.

15 **THE COURT:** Is that agreed, Mr. Bosch?

16 **MR. BOSCH:** As of the date of formation of RSD,
17 correct. Anything predating the formation there's no common
18 interest because they're not--

19 **THE COURT:** All right.

20 **MS. KROPF:** And that's why we've already produced
21 those documents, so there's really no question here.

22 **THE COURT:** What remains?

23 **MS. KROPF:** So what remains is they want to ask Rock
24 Springs Drive's lawyer about the conversations he had with his
25 clients or with his joint venture partners about why he did or

Nadine M. Bachmann, RMR, CRR - Federal Official Court Reporter

95

1 chose -- why they did or did not decide to disclose
2 information to the plaintiff. So I'm sure Mr. Bosch is going
3 to stand up and repeat the mantra that this is a sham and that
4 we didn't share any information. It is completely false. If
5 you look at the communications that Mr. Barren sent to Mr.
6 Bosch, not privileged, they disclose a litany of information
7 about what Rock Springs Drive was doing. He was the contact
8 person, there were public documents about it. It asks them
9 some questions. A whole bunch of information, efforts to
10 sublease. Many of the things that they say we didn't disclose.
11 But what they fundamentally want to get to is they wanted him
12 to disclose more. So plaintiff, even though there's no legal
13 obligation or there wasn't until Your Honor created one in
14 this case, any legal obligation contract or in Maryland law as
15 you recognized in your opinion to make these disclosures. And
16 so -- but what they say is that it was wrong for him not to.
17 They want to pierce the veil, pierce the privilege there and
18 ask Mr. Barren, the lawyer, about his communications with his
19 client, or with the joint venture partner about why those
20 decisions were made. That is the heart of attorney/client
21 privilege.

22 It's important to keep in mind here that Mr. Barren was
23 --

24 **THE COURT:** Is he the attorney for both entities,
25 both your client and a partner or --

Nadine M. Bachmann, RMR, CRR - Federal Official Court Reporter

96

1 **MS. KROPF:** So he was originally the lawyer for
2 Longshore Ventures which is the managing member of Rock
3 Springs Drive. And then his same firm was retained to
4 represent Rock Springs Drive. And he sent a letter to Mr.
5 Bosch saying, "I'm the lawyer for Rock Springs Drive."

6 **THE COURT:** Okay.

7 **MS. KROPF:** And so one of the primary issues seems
8 to be what he decided to disclose and why he perhaps didn't.
9 Now in that role, Your Honor, he's acting as the lawyer. The
10 first reach out that my client got wasn't from Mr. Camalier,
11 wasn't from someone who wanted to see what was going on. It
12 wasn't business person to business person. Mr. Bosch, the
13 litigation counsel, reached out.

14 **THE COURT:** May I stop you for a minute? I need to
15 know what more you're trying to find out. I'm vague since I
16 just started representation that everything you need to know
17 was already out there. What more do you want to find out
18 about, Mr. Bosch?

19 **MR. BOSCH:** Well, first of all Mr. -- there is no
20 prohibition against deposing counsel when the counsel is not
21 serving in a legal capacity. As you recall Mr. Barren is a
22 person who --

23 **THE COURT:** Wait, you're not opposing his being
24 deposed in any respect, are you?

25 **MR. BOSCH:** They are.

Nadine M. Bachmann, RMR, CRR - Federal Official Court Reporter

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Rock Spring Plaza II, LLC,

Plaintiff,

v.

Investors Warranty of America, LLC,
et al.,

Defendants.

Civil Action No. 8:20-cv-01502-PJM

DECLARATION OF REBECCA DAVIS

I, REBECCA DAVIS, based on my personal knowledge and pursuant to 28 U.S.C. § 1746, declare that I have the legal capacity to give the within declaration from personal knowledge for all purposes permitted under law, and state that:

1. My name is Rebecca A. Davis. I am over the age of 21 and I am competent to make this declaration. I have personal knowledge of all the facts stated here, all of which are true and correct.
2. I am a Partner in the Atlanta office of the law firm of Seyfarth Shaw, LLP. Seyfarth Shaw is counsel of record for Investors Warranty of America, LLC in the above-referenced proceeding.
3. I am familiar with the discovery proceedings and depositions taken in this case.
4. Attached hereto as Exhibit 1 is a true and correct copy of the Deposition Transcript for the Deposition of Paul Rubin, as the 30(b)(6) witness for Rock Springs Drive, LLC, taken on April 7, 2023.
5. Attached hereto as Exhibit 2 is a true and correct copy of the Deposition Transcript for the Deposition of Robert Barron, taken on April 14, 2023.

6. Attached hereto as Exhibit 3 is a true and correct copy of the Deposition Transcript for the Deposition of Troy Taylor, taken on April 6, 2023.

7. Attached hereto as Exhibit 4 is a true and correct copy of Robert Barron's resume, which I obtained online from Berger Singerman LLPs' website.

8. Attached hereto as Exhibit 5 is a true and correct copy of the Deposition Transcript for the Deposition of David Feltman, as the 30(b)(6) witness for Investors Warranty of America, LLC, taken on March 16, 2023.

9. Attached hereto as Exhibit 6 is a true and correct copy of the Deposition Transcript for the Deposition of Matt Pithan, taken on March 30, 2023.

10. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this the 25th day of April, 2023.

/s/Rebecca A. Davis
Rebecca A. Davis

EXHIBIT 1



Planet Depos®
We Make It *Happen™*

Transcript of Paul Rubin, Designated Representative

Date: April 7, 2023

Case: Rock Spring Plaza II LLC -v- Investors Warranty of America LLC, et al.

Planet Depos

Phone: 888.433.3767

Email: transcripts@planetdepos.com

www.planetdepos.com

WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

Transcript of Paul Rubin, Designated Representative
April 7, 2023

291

1	So I object and I instruct him not	02:11:34
2	to answer. He's not here to testify	02:11:36
3	about defenses to fraud. If you want to	02:11:38
4	identify the claim in the case and ask	02:11:40
5	the question correctly, identifying the	02:11:42
6	claim that's here and our defenses to it,	02:11:44
7	he's prepared to testify.	02:11:46
8	(Directive.)	02:11:47
9	MR. BOSCH: Fair enough.	02:11:48
10	BY MR. BOSCH:	02:13:10
11	Q Mr. Rubin, what facts can you	02:13:10
12	provide to support RSD's defense that the	02:13:14
13	assignment was not a fraudulent conveyance?	02:13:19
14	MS. KROPF: You can answer	02:13:22
15	that.	02:13:22
16	A The estoppel agreement permits the	02:13:25
17	assignment.	02:13:28
18	BY MR. BOSCH:	02:13:31
19	Q Anything else?	02:13:31
20	A I'm sure there are other defenses,	02:13:37
21	but that's the defense I remember right at	02:13:39
22	the moment.	02:13:43

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

A402

Transcript of Paul Rubin, Designated Representative
April 7, 2023

293

1	understanding of the defenses.	02:15:10
2	I'm asking for you to testify as to	02:15:10
3	any facts in support of RSD's defense that	02:15:13
4	the assignment was not a fraudulent	02:15:16
5	conveyance.	02:15:18
6	A I can tell you that Longshore had	02:15:25
7	no intent to defraud the landlord when it	02:15:34
8	entered into the joint venture with	02:15:37
9	Rock Springs Drive.	02:15:40
10	Q And what's the basis for that	02:15:42
11	testimony?	02:15:43
12	A I don't know how I can give you a	02:15:48
13	basis for a negative.	02:15:50
14	Q Prove it.	02:15:53
15	MS. KROPF: Objection as to	02:15:57
16	form.	02:15:57
17	A Because I'm here to tell you.	02:15:57
18	BY MR. BOSCH:	02:15:59
19	Q Can you testify to that on behalf	02:15:59
20	of RSD?	02:16:03
21	MS. KROPF: Objection as to	02:16:09
22	form.	02:16:09

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

A403

Transcript of Paul Rubin, Designated Representative

April 7, 2023

265

1	become aware that it was not recorded until	01:50:13
2	after the fact.	01:50:15
3	Q I got that.	01:50:17
4	When did you first learn that the	01:50:19
5	transfer or your assignment of the	01:50:20
6	ground lease had not been recorded?	01:50:21
7	A I'm not sure. I either learned of	01:50:27
8	it -- became aware of it either when your	01:50:30
9	letter came or it's also possible -- when I	01:50:35
10	paid the real estate tax bill, either in	01:50:42
11	2017 or 2018, my recollection is not firm on	01:50:45
12	it, I called the County and I asked them,	01:50:49
13	could they redirect real estate bill to	01:50:55
14	Rock Springs Drive, and they said the	01:50:58
15	assignment was not recorded, you'd have to	01:51:00
16	record it.	01:51:03
17	Q I missed that. They said what?	01:51:05
18	A That the name in the records for	01:51:08
19	the leasehold was IWA and it had not --	01:51:11
20	nobody had recorded an assignment, so as	01:51:15
21	long as that was the case, they were going	01:51:18
22	to continue to send the real estate tax bill	01:51:20

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

A404

EXHIBIT 2



Planet Depos®
We Make It *Happen™*

Transcript of Robert W. Barron

Date: April 14, 2023

Case: Rock Spring Plaza II LLC -v- Investors Warranty of America LLC, et al.

Planet Depos

Phone: 888.433.3767

Email: transcripts@planetdepos.com

www.planetdepos.com

WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

Transcript of Robert W. Barron
Conducted on April 14, 2023

23

1 facts were that the present landlord is the 09:23:41
2 landlord, and the tenant was an affiliate of 09:23:44
3 the landlord. So y'all were on both -- your 09:23:48
4 client was on both sides of landlord and 09:23:52
5 tenant. 09:23:54

6 As I understand it, your client's 09:23:56
7 tenant breached or failed to pay back the 09:23:58
8 loan. They walked away from the loan. They 09:24:01
9 defaulted. So they were the defaulting 09:24:04
10 borrower and didn't pay their loan. And so 09:24:07
11 the lender had a choice. They could either 09:24:10
12 foreclose directly, or they could assign the 09:24:12
13 loan into a shell and have the shell 09:24:14
14 foreclose. 09:24:16

15 Instead, what they did, as understand 09:24:19
16 it -- I wasn't counsel for them, but I read 09:24:22
17 the documents. And there's a document -- I 09:24:24
18 don't know. In all your letters to me, you 09:24:26
19 never mentioned this document. But it's 09:24:29
20 called the Ground Lessor Estoppel and 09:24:30
21 Nondisturbance Agreement. 09:24:32

22 And in that agreement, in paragraph 19, 09:24:35

Transcript of Robert W. Barron
Conducted on April 14, 2023

24

1	your client agreed with the lender in order	09:24:38
2	to induce them to make the loan -- if you	09:24:40
3	look at the recital B, the lender said, I	09:24:44
4	will not make the loan unless you let the	09:24:48
5	landlord sign this document. So your client	09:24:51
6	signed this document.	09:24:54
7	And in paragraph 19, your client said,	09:24:55
8	lender: And I quote, you have the absolute	09:24:57
9	right to assign this lease if you foreclose.	09:25:04
10	Absolute right to any third party. Any third	09:25:07
11	party is what your client agreed to.	09:25:11
12	And then they thought and said, wait a	09:25:14
13	minute, that's too broad. Let's have a	09:25:16
14	condition, so the next sentence, your client	09:25:18
15	said -- and by the way, your client is also	09:25:22
16	the tenant. So you both, together, did this	09:25:24
17	to encourage the lender to make the loan.	09:25:26
18	So then your client said, so long as --	09:25:29
19	there's a condition. There's a condition to	09:25:31
20	this assignment. So long as such third party	09:25:34
21	assumes all the tenant's obligations under	09:25:38
22	the lease.	09:25:40

Transcript of Robert W. Barron
Conducted on April 14, 2023

25

1	So it is very common in my practice for	09:25:41
2	a lender to foreclose. They either put the	09:25:44
3	loan in a shell and have the shell foreclose.	09:25:47
4	Or, you know, if they look at the document	09:25:50
5	and say, look, the landlord has agreed that	09:25:54
6	after we foreclose, we have the absolute	09:25:58
7	right to assign to a third party. And the	09:26:00
8	lease says, this estoppel, you are	09:26:05
9	automatically released from any further	09:26:08
10	liability, except, of course, the liability	09:26:11
11	that you had when you were lender and you	09:26:13
12	were the tenant for that period of time,	09:26:15
13	which I totally get.	09:26:17
14	This is very common in my world; that	09:26:20
15	the landlord, in order to get financing, will	09:26:22
16	tell the lender, look, if this fails, we	09:26:25
17	won't go after you, lender. And so this	09:26:29
18	structure is very common.	09:26:32
19	And what I don't understand is we	09:26:35
20	have -- this provision says they have the	09:26:40
21	absolute right to assign to any third party,	09:26:43
22	and they are automatically released. And in	09:26:45

Transcript of Robert W. Barron
Conducted on April 14, 2023

26

1	all your correspondence to me, you throw	09:26:49
2	around the "fraud" word in a way that is very	09:26:52
3	odd for a lawyer of your stature, when you	09:26:55
4	have a right given to this borrower, this	09:27:00
5	lender -- that's from the -- from your client	09:27:04
6	that says absolute, and automatically	09:27:07
7	released.	09:27:11
8	So, yes, sir, I have seen this before.	09:27:15
9	I have never seen a landlord renege on such a	09:27:16
10	clear covenant. It's so clear. I've never	09:27:20
11	seen that before in my career. I've done	09:27:22
12	this for 30 years. I've never seen that	09:27:25
13	before.	09:27:28
14	BY MR. BOSCH:	09:27:29
15	Q. So, Mr. Barron, you have a document in	09:27:29
16	front of you that you were just referring to?	09:27:32
17	A. Yes, sir. Sure. It's -- the document	09:27:34
18	is "Ground Lessor Estoppel and Nondisturbance	09:27:35
19	Agreement." The parties are --	09:27:40
20	Q. I know who they are. I just want to	09:27:42
21	make sure.	09:27:44
22	So do you have other documents in front	09:27:45

Transcript of Robert W. Barron
Conducted on April 14, 2023

27

1	of you presently?	09:27:47
2	A. No, sir, this is it.	09:27:48
3	Q. So you were prepared to give that	09:27:50
4	little speech, were you not?	09:27:51
5	A. I am prepared to respond to you, sir.	09:27:53
6	Because I've been doing this for 30 years. And	09:27:55
7	for an officer of the court to tell another	09:27:58
8	officer of the court that it's fraudulent conduct,	09:28:01
9	when your client absolutely agreed to permit this	09:28:05
10	transaction, I'm -- you know, I'm disappointed.	09:28:09
11	I'm just disappointed.	09:28:14
12	Q. Okay. Have you been deposed before,	09:28:18
13	Mr. Barron?	09:28:20
14	A. Yes, sir -- no, never deposed. I've	09:28:21
15	been a witness.	09:28:23
16	Q. Okay. So as you know, I will be asking	09:28:25
17	you questions. I'd ask you to wait for me to	09:28:28
18	finish and then give a verbal so the Court	09:28:34
19	Reporter can record what we both say. If you	09:28:38
20	don't understand a question, will you tell me?	09:28:41
21	A. Yes.	09:28:43
22	Q. If you answer, I'll assume you	09:28:45

Transcript of Robert W. Barron
Conducted on April 14, 2023

38

1	perform?	09:39:01
2	MS. KROPF: Objection as to form.	09:39:02
3	THE WITNESS: And the issue is, what's	09:39:07
4	the terms of the lease. Because that	09:39:09
5	question, there is no absolute answer. The	09:39:10
6	issue is what does the lease say.	09:39:13
7	And in this situation, the landlord	09:39:19
8	agreed that the lender had the absolute right	09:39:21
9	to assign to a third party and be	09:39:23
10	automatically released. So whether	09:39:26
11	generally, there may be a general rule, we	09:39:30
12	have an agreement between sophisticated	09:39:32
13	parties that provide for an automatic	09:39:35
14	release.	09:39:37
15	BY MR. BOSCH:	09:39:38
16	Q. That's your understanding?	09:39:38
17	A. That's what the words say.	09:39:40
18	Q. Meaning it's an automatic release even	09:39:41
19	if the assignee cannot perform or fulfill the	09:39:44
20	tenant's obligations under the ground lease?	09:39:47
21	MS. KROPF: Objection as to form.	09:39:49
22	THE WITNESS: My answer would be that	09:39:51

Transcript of Robert W. Barron
Conducted on April 14, 2023

60

1	that worked with Algon on that transaction.	10:00:56
2	Q. That was the Traditions project in	10:01:03
3	Florida?	10:01:07
4	A. Yes, sir.	10:01:08
5	Q. Where you were actually adverse to IWA?	10:01:09
6	A. We were adverse, yes, sir. Our client	10:01:13
7	was.	10:01:16
8	Q. So at this initial discussion with	10:01:22
9	Mr. Feltman, did you understand that the	10:01:24
10	transaction that Mr. Feltman was proposing was in	10:01:26
11	the nature of a workout?	10:01:29
12	MS. KROPF: Objection as to form.	10:01:30
13	THE WITNESS: Yes, sir, I think that's	10:01:34
14	part of the issue of getting Algon involved.	10:01:36
15	BY MR. BOSCH:	10:01:39
16	Q. Explain to me why.	10:01:39
17	A. Well, Algon -- Troy Taylor and	10:01:40
18	Paul Rubin, Algon is -- has the a lot of	10:01:54
19	experience trying to work out situations and try	10:01:57
20	to find win-win situations for transactions that	10:02:03
21	need that professional input. And he's got --	10:02:10
22	they have tremendous experience in troubled	10:02:15

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

A413

Transcript of Robert W. Barron
Conducted on April 14, 2023

61

1	assets.	10:02:20
2	Q. Mr. Barron, I thought I understood you	10:02:22
3	to say earlier that it's very common in this	10:02:24
4	industry for a lender to assign or to take an	10:02:27
5	interest in property through a shell. So what was	10:02:30
6	it about this particular transaction that	10:02:33
7	Mr. Feltman was proposing that required Algon and	10:02:35
8	the involvement of Jordi Gusso, your restructuring	10:02:37
9	and bankruptcy partner?	10:02:44
10	A. My memory was they -- they, IWA, had	10:03:00
11	been in some litigation with the Camalier family.	10:03:04
12	It was apparently very acrimonious. And there was	10:03:07
13	a worry that -- notwithstanding the fact that they	10:03:16
14	had a provision in the lease or the lease	10:03:18
15	documents at that time, they would say, that	10:03:20
16	allowed the lender to assign and be released from	10:03:24
17	all liability.	10:03:27
18	There was a high sense of lack of trust	10:03:31
19	that the landlord would comply with the terms of	10:03:36
20	the lease.	10:03:40
21	Q. All right. So at this initial meeting	10:03:45
22	with Mr. Feltman, it was Mr. Feltman who laid out	10:03:47

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

A414

Transcript of Robert W. Barron
Conducted on April 14, 2023

66

1	discussion as to why Mr. Feltman and IWA wanted to	10:08:11
2	delay Algon from having discussions with the	10:08:14
3	landlord for 36 months or so?	10:08:17
4	MS. KROPF: Objection as to form.	10:08:20
5	THE WITNESS: My understanding was a	10:08:21
6	combination of the lack -- severe lack of	10:08:25
7	trust with the landlord based upon this other	10:08:30
8	litigation, concern that the landlord would	10:08:35
9	not honor the terms of the lease. And so the	10:08:36
10	concept of getting beyond the time period	10:08:42
11	for -- to try to attack the agreement based	10:08:49
12	upon transfer.	10:08:53
13	BY MR. BOSCH:	10:08:55
14	Q. That was one of the purposes for	10:08:56
15	structuring this transaction that Mr. Feltman	10:08:57
16	identified from the beginning?	10:08:59
17	MS. KROPF: Objection as to form.	10:09:02
18	THE WITNESS: I don't know if -- I	10:09:02
19	don't know if in that call, that was	10:09:10
20	discussed. But we got a term sheet later.	10:09:12
21	So I don't know if -- and, again, to me, that	10:09:15
22	call with him was very high level.	10:09:17

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

A415

Transcript of Robert W. Barron
Conducted on April 14, 2023

78

1	BY MR. BOSCH:	10:29:22
2	Q. Who was advising Berger Singerman in	10:29:23
3	connection with the allegations that the	10:29:26
4	transaction you helped structure was a fraudulent	10:29:29
5	conveyance?	10:29:32
6	MS. KROPF: Objection as to form.	10:29:34
7	THE WITNESS: We are a law firm. I'm	10:29:38
8	not aware of any outside counsel for our firm	10:29:43
9	for this matter.	10:29:49
10	BY MR. BOSCH:	10:29:54
11	Q. You testified earlier about the	10:29:55
12	conversations and your understanding of	10:29:57
13	Mr. Feltman about the desire to have Algon delay	10:30:00
14	reaching out to the landlord to discuss the ground	10:30:07
15	lease. Do you recall that testimony?	10:30:11
16	A. Yes, sir.	10:30:12
17	Q. Did you discuss the substance of that	10:30:13
18	testimony with anyone during the break?	10:30:17
19	A. No, sir.	10:30:20
20	Q. Do you recall there being any	10:30:20
21	discussion, what would happen next when Algon did	10:30:21
22	reach out to the landlord?	10:30:24

Transcript of Robert W. Barron
Conducted on April 14, 2023

79

1	A.	The hope -- the hope was that the	10:30:27
2		parties would negotiate.	10:30:33
3	Q.	I understand.	10:30:36
4		And was there any discussion of what	10:30:38
5		would happen if the landlord did not agree to	10:30:39
6		modify the terms of the ground lease?	10:30:43
7	A.	Not a lot of discussion. But at some	10:30:51
8		point, if there's -- there was great unknown with	10:30:56
9		the market turn, if the market didn't turn.	10:31:00
10		Because my understanding just generally was that	10:31:04
11		the ground rent was too high for the current	10:31:07
12		market of rent, you know, subleases for renting	10:31:11
13		the building.	10:31:15
14		So either the market would turn, or the	10:31:16
15		landlord would decide to renegotiate the ground	10:31:20
16		lease. And so they -- you know, they didn't know.	10:31:26
17		That's why part of our negotiation of the	10:31:32
18		operating agreement was an upside for Algon if	10:31:37
19		they could -- if they could turn this thing	10:31:41
20		around.	10:31:42
21	Q.	Was there any discussion of what would	10:31:43
22		happen if the market didn't turn and if the	10:31:45

Transcript of Robert W. Barron
Conducted on April 14, 2023

80

1	landlord did not agree to modify the terms of the	10:31:47
2	ground lease?	10:31:50
3	A. Not in great detail. But I think at	10:31:54
4	some point, there may be a situation where we have	10:31:57
5	to give back the interest to the landlord, which	10:32:00
6	is frankly what the prior tenant, the Camalier	10:32:03
7	entity did when they were tenant.	10:32:07
8	Q. What do you mean by "give back the	10:32:09
9	interest to the landlord"?	10:32:11
10	A. You basically say that we can't make	10:32:12
11	this a going concern -- I don't know. Whatever --	10:32:15
12	it's the same thing that the Camalier tenant did	10:32:17
13	on the original loan, that they -- they couldn't	10:32:21
14	make a go of it. They defaulted, and they gave	10:32:25
15	back the interest through foreclosure.	10:32:30
16	They would -- they would, I assume,	10:32:32
17	talk to the landlord and say, it's not working.	10:32:33
18	You are not renegotiating. The market is not	10:32:35
19	turning, so tell us what you want to do with your	10:32:40
20	interest.	10:32:43
21	Q. I want to understand more of what you	10:32:50
22	mean by giving it back to the landlord. I don't	10:32:51

Transcript of Robert W. Barron
Conducted on April 14, 2023

81

1	understand that. Can you explain what that,	10:32:56
2	what -- how -- as a sophisticated lawyer, what	10:33:00
3	does that mean to give the ground lease interest	10:33:03
4	back to the landlord?	10:33:05
5	A. Yeah. So -- well, I mean, you're	10:33:07
6	sophisticated. Your client did this in connection	10:33:12
7	with the predecessor to the lender; right? It was	10:33:15
8	a joint venture between the Camaliers and -- it's	10:33:20
9	written down here. It's Lockheed Martin.	10:33:24
10	Lockheed Martin and the Camaliers were	10:33:30
11	joint ventures as the tenant. They borrowed	10:33:32
12	money, and they were unable to make it work for	10:33:34
13	whatever reason. And they effectively gave back	10:33:37
14	the interest. And now the landlord didn't take it	10:33:40
15	back, because I guess it was encumbered by a	10:33:43
16	mortgage. So the lender foreclosed it.	10:33:46
17	So here we have a situation where it's	10:33:49
18	free and clear. There's no third-party mortgage.	10:33:51
19	So if there's no third-party mortgage, the tenant	10:33:53
20	would say, landlord, if you're not going to	10:33:57
21	renegotiate and we cannot find tenants, we need to	10:33:59
22	negotiate a -- an orderly turning over the keys.	10:34:02

Transcript of Robert W. Barron
Conducted on April 14, 2023

82

1	I mean, that's just -- that's one of	10:34:09
2	the options in a workout situation when the	10:34:10
3	parties can't reach a win-win situation.	10:34:12
4	Q. Meaning that ground lease tenant would	10:34:16
5	walk away from its obligations under the ground	10:34:18
6	lease?	10:34:20
7	A. Correct. Or the landlord could get a	10:34:21
8	judgment against the entity. They could sue in	10:34:24
9	court and get a judgment against the entity.	10:34:26
10	That -- I don't know, I don't know the	10:34:28
11	facts of what happened with the Camalier/Lockheed	10:34:31
12	tenant. Did they get a judgment against that	10:34:35
13	tenant? Because they obviously walked away. How	10:34:37
14	did they walk away?	10:34:40
15	Q. Mr. Barron, I want to go to your	10:34:42
16	discussions with Mr. Feltman, where this was --	10:34:44
17	this possibility was discussed.	10:34:47
18	Was it something Mr. Feltman discussed?	10:34:52
19	A. No, sir. This was a very big, big high	10:34:55
20	level conversation of -- as I said, we had -- we	10:34:57
21	have a ground lease. The lease documents say we	10:35:03
22	can transfer the document, the lease, and be	10:35:05

Transcript of Robert W. Barron
Conducted on April 14, 2023

83

1 released, very, very high level. 10:35:10

2 Q. But who raised this possibility of 10:35:12

3 walking away if the ground lease was not modified 10:35:13

4 or if the market didn't improve? 10:35:17

5 A. Well, it's just logic. I don't 10:35:19

6 remember if there's a -- you know, if there's a

7 who, but that's the options when you go forward in

8 a distressed asset.

9 Q. Yes, I understand. 10:35:34

10 But you said that there were 10:35:35

11 conversations, and I want to know who participated 10:35:36

12 in those conversations. 10:35:38

13 MS. KROFF: And I'll caution you if 10:35:42

14 they are conversations with your clients, 10:35:45

15 then you should not reveal them. But if 10:35:47

16 they're conversations with Mr. Feltman or IWA 10:35:49

17 or somebody else, you can talk about them. 10:35:51

18 THE WITNESS: I don't -- I don't recall 10:35:57

19 conversations -- it would be really with 10:35:58

20 Mr. Snitker -- on long-term, at the end of 10:36:05

21 the day. 10:36:08

22 My thought was they were hoping that 10:36:15

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

A421

Transcript of Robert W. Barron
Conducted on April 14, 2023

84

1	when the landlord saw that the release is	10:36:18
2	effective under the estoppel, that they would	10:36:20
3	come to the table, and they'd work out	10:36:23
4	something.	10:36:25
5	Or the Camaliers would say -- and I say	10:36:25
6	that colloquially -- the landlord would say,	10:36:27
7	no, we'd rather have the property back	10:36:33
8	ourselves and we'll run it. I think that was	10:36:35
9	the hope. But I don't recall detailed	10:36:37
10	discussions about it.	10:36:40
11	BY MR. BOSCH:	10:36:41
12	Q. Right. But the discussions about	10:36:41
13	walking away from the ground lease were between	10:36:42
14	you and Mr. Snitker?	10:36:44
15	A. I don't even know if we even got that	10:36:48
16	far. I think -- that was just general discussions	10:36:49
17	about, you know, hopefully, they'll negotiate.	10:36:53
18	But, again, not -- strong -- strong concern that	10:37:01
19	the landlord would not negotiate, based upon the	10:37:10
20	other litigation.	10:37:13
21	Q. And then what? I want to get into the	10:37:14
22	conversations about what if the landlord would not	10:37:16

Transcript of Robert W. Barron
Conducted on April 14, 2023

85

1	renegotiate?	10:37:19
2	A. Yeah, and I don't -- I don't recall	10:37:20
3	details about that. I don't really think they	10:37:22
4	went that far in discussing.	10:37:26
5	Q. You referenced earlier the -- what	10:37:31
6	happened at -- with the borrower and the lender.	10:37:34
7	And you said that the borrower gave back the	10:37:38
8	property to the lender? Is that correct?	10:37:41
9	A. Well, this whole situation happened	10:37:44
10	because of Camalier/Lockheed Martin; right? A	10:37:47
11	Camalier, Lockheed Martin tenant reached their	10:37:51
12	loan with IWA. So they, for whatever reason,	10:37:57
13	elected not to pay their loan is my understanding.	10:38:02
14	That's why you have a foreclosure; right?	10:38:06
15	MS. KROPF: So he's not going to answer	10:38:14
16	your questions. You just give your answers.	10:38:15
17	THE WITNESS: Okay. I just gave him --	10:38:18
18	I'm sorry.	10:38:18
19	Yes, sir. That's what I was referring	10:38:20
20	to.	10:38:21
21	BY MR. BOSCH:	10:38:21
22	Q. And do you have any understanding of	10:38:22

Transcript of Robert W. Barron
Conducted on April 14, 2023

197

1	would occur.	12:50:40
2	Q. And that space in time was --	12:50:41
3	A. Unless they agreed otherwise.	12:50:44
4	Q. And that space of time was the first	12:50:47
5	38 months of the term of Newco?	12:50:51
6	A. Yes, sir. At least of the term sheet	12:50:55
7	stage.	12:50:56
8	Q. Right. And do you recall there being	12:50:58
9	any discussion of that time as it relates to the	12:50:58
10	statute of limitations on a fraudulent conveyance	12:51:02
11	claim?	12:51:05
12	A. Generally, I heard that number but	12:51:06
13	didn't really understand it because my	12:51:08
14	understanding that time is longer. So I never	12:51:10
15	really understood that 38 number.	12:51:12
16	Q. But you understood that the 38 month	12:51:15
17	number from IWA came in the context of their	12:51:18
18	understanding of the statute of limitations?	12:51:21
19	MS. KROPF: Objection as to form.	12:51:23
20	THE WITNESS: My understanding from	12:51:25
21	Snitker is that, again, they were worried	12:51:25
22	about the acrimony with the landlord, and	12:51:29

Transcript of Robert W. Barron
Conducted on April 14, 2023

198

1	they were worried that the -- notwithstanding	12:51:32
2	the provision that said you could assign to a	12:51:38
3	third party and be released from all	12:51:39
4	liabilities, they didn't trust the landlord	12:51:42
5	and didn't think that they would stick with	12:51:44
6	that provision. And so they wanted extra	12:51:46
7	defenses because of their prior acrimony with	12:51:50
8	the affiliated entities of the landlord.	12:51:58
9	BY MR. BOSCH:	12:52:00
10	Q. So don't talk to the landlord for at	12:52:01
11	least three years and two months?	12:52:02
12	MS. KROPP: Objection as to form.	12:52:05
13	THE WITNESS: That's what the term	12:52:07
14	sheet said, unless they otherwise grant their	12:52:08
15	written consent.	12:52:11
16	BY MR. BOSCH:	12:52:14
17	Q. Directing your attention, please, to	12:52:14
18	the next page, this is paragraph 18. And,	12:52:15
19	actually, there's a second 18. And I'm sure	12:52:21
20	you've seen this one before. Do you see this	12:52:24
21	language here, "Jordi-ABC process. How do we bury	12:52:27
22	the entity?"	12:52:34

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

A425

Transcript of Robert W. Barron
Conducted on April 14, 2023

232

1	A.	No, sir. Because the reason why I	14:21:54
2		believe that is because we sent you a copy of the	14:21:56
3		assignment, or you were given notice of the	14:21:58
4		assignment. We notified the landlord of the	14:22:01
5		assignment, so it wasn't like we were trying to	14:22:04
6		hide the assignment from the landlord. So it was	14:22:06
7		another reason. It was a tax reason or something.	14:22:11
8	Q.	Well, you understand that there are	14:22:13
9		other creditors of this property, do you not?	14:22:15
10		MS. KROPF: Objection as to form.	14:22:18
11		THE WITNESS: Yes.	14:22:21
12	BY MR. BOSCH:		14:22:23
13	Q.	So why not give notice to other	14:22:23
14		creditors?	14:22:25
15		MS. KROPF: Objection as to form.	14:22:27
16		THE WITNESS: The decision was made not	14:22:29
17		to do so.	14:22:34
18	BY MR. BOSCH:		14:22:35
19	Q.	And that was IWA's decision?	14:22:36
20	A.	Yes.	14:22:37
21	Q.	Was it made on your advice?	14:22:38
22		MS. KROPF: Objection as to form. IWA	14:22:42

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

A426

Transcript of Robert W. Barron
Conducted on April 14, 2023

257

1 that one of the sad things about this 14:44:53
2 engagement, this interaction that I had with 14:44:57
3 you with letters is that you presuppose that 14:44:59
4 if I exercise that discretion and choose not 14:45:02
5 to answer, you call it fraud. 14:45:06

6 And with respect, I bet if I followed 14:45:12
7 you around every day and watched lawyers ask 14:45:15
8 you questions, with respect, I could bet you 14:45:18
9 a dollar that you'd choose, in your 14:45:20
10 discretion, not to answer questions. And 14:45:23
11 with respect, if those lawyers called your 14:45:25
12 conduct fraudulent, you might get a little 14:45:29
13 aggravated. 14:45:32

14 So with respect, just because you have 14:45:33
15 the right to ask a question doesn't mean you 14:45:36
16 have the right to require an answer. 14:45:38

17 BY MR. BOSCH: 14:45:44

18 Q. All right. Thank you. But I'd like to 14:45:44
19 come back to my question, Mr. Barron. 14:45:46

20 A. Uh-huh. 14:45:48

21 Q. Your testimony is that there was no 14:45:49
22 discussion about sharing information with the 14:45:52

Transcript of Robert W. Barron
Conducted on April 14, 2023

345

1	BY MR. BOSCH:	16:19:20
2	Q. So you see in this letter -- and if you	16:19:21
3	look, it's the second paragraph on the first page,	16:19:22
4	where in the middle of the paragraph, there's some	16:19:27
5	appearance of furtiveness on your client's part.	16:19:30
6	That was the concern being expressed in this	16:19:34
7	letter? Do you see that, Mr. Barron?	16:19:37
8	A. Yes, sir. This, is what, again, I	16:19:39
9	would call a litigation letter.	16:19:40
10	Q. Fair.	16:19:44
11	A. Very self-serving.	16:19:46
12	Q. Whatever you want to call it.	16:19:47
13	But, you know, so here, the landlord is	16:19:48
14	expressing concern, because there was the	16:19:51
15	appearance of furtiveness.	16:19:54
16	Was that unreasonable given that you	16:19:56
17	had refused to identify any of the principals?	16:19:59
18	A. Sir, with all due respect, one of the	16:20:04
19	disagreements that you and I had is that you	16:20:06
20	assume that if someone does not answer a question	16:20:10
21	that you ask, it is by definition either in bad	16:20:13
22	faith or fraud, which if I placed this standard	16:20:18

Transcript of Robert W. Barron
Conducted on April 14, 2023

346

1	upon you in your practice, you would be in deep	16:20:21
2	water really fast.	16:20:26
3	Otherwise, you're not a very good	16:20:27
4	lawyer. And I'm sure you're an excellent lawyer.	16:20:29
5	So I'm disappointed in someone at your stature	16:20:33
6	suggesting that the very, just the bare minimum of	16:20:36
7	asking me a question, if I don't answer your	16:20:41
8	question, I'm somehow in a category of bad faith	16:20:43
9	or fraudulent.	16:20:47
10	Sir, honestly, ethically, I cannot	16:20:49
11	believe that is the proper tact to take in	16:20:53
12	litigation. Perhaps it is because I'm not a	16:20:56
13	litigator. But I can't believe that is the proper	16:20:58
14	tact for lawyers to treat other lawyers in	16:21:01
15	litigation. Maybe it is. This is not my area.	16:21:04
16	But I can't believe that's the case. Maybe it is.	16:21:07
17	I'm just not a litigator.	16:21:17
18	Q. My question, sir: Was it unreasonable	16:21:19
19	for the landlord to express that there was the	16:21:21
20	appearance of furtiveness, given that you had	16:21:23
21	refused to identify any of the principals of RSD?	16:21:27
22	A. Sir, with respect, this -- life does	16:21:30

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

A429

Transcript of Robert W. Barron
Conducted on April 14, 2023

347

1	not happen in a vacuum, and we're dealing with	16:21:34
2	letters written by the head of a major, big law	16:21:38
3	firm, the head of litigation, from a landlord	16:21:42
4	whose affiliate has been in years in litigation	16:21:46
5	with this same company.	16:21:50
6	And so is it reasonable for the parties	16:21:52
7	to not trust and be concerned with litigator	16:21:55
8	letters? Absolutely. It's reasonable to be	16:22:00
9	concerned and not to give them anything that you	16:22:03
10	don't have to because we've already gone	16:22:06
11	through -- not we. But they've already gone	16:22:08
12	through litigation with you. I think it's	16:22:12
13	incredibly reasonable. In fact, if you were	16:22:15
14	counsel, you would be giving the same legal	16:22:19
15	advice. That's what so sad about this.	16:22:20
16	Q. Mr. Barron, again, you've missed my	16:22:24
17	question.	16:22:26
18	Was it unreasonable for the landlord to	16:22:27
19	be concerned about the appearance of furtiveness,	16:22:29
20	given that you had refused to identify any of the	16:22:32
21	principals?	16:22:35
22	MS. KROPF: Objection as to form.	16:22:36

Transcript of Robert W. Barron
Conducted on April 14, 2023

348

1	THE WITNESS: Objection. I've already	16:22:39
2	answered the question, sir.	16:22:40
3	BY MR. BOSCH:	16:22:42
4	Q. No. I think you were trying to	16:22:42
5	rationalize IWA or RSD's conduct.	16:22:44
6	I'm asking you as the person to whom	16:22:54
7	questions about the assignment were to be	16:22:57
8	directed, when the litigator for the landlord	16:22:59
9	writes you and says that there's concern about the	16:23:02
10	appearance of furtiveness, was that unreasonable	16:23:04
11	given that you had refused to identify any of the	16:23:08
12	principals?	16:23:11
13	A. And my response would be, sir, that	16:23:12
14	it -- that whether you're reasonable or not, I'm	16:23:14
15	not obligated to provide that information to you.	16:23:18
16	So just because I don't provide the information to	16:23:22
17	you doesn't mean that you have the right to get	16:23:25
18	it.	16:23:31
19	Q. It might mean, however, that you're	16:23:32
20	acting in bad faith; isn't that right?	16:23:34
21	A. It may mean a lot of things. You have	16:23:36
22	to know the facts.	16:23:38

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

A431

Transcript of Robert W. Barron
Conducted on April 14, 2023

362

1	A.	This is -- this is writing a letter, so	16:41:22
2		that one day when you depose someone, you can say,	16:41:24
3		I said this, and you didn't respond to me, as if	16:41:26
4		we have to respond to you.	16:41:30
5		It's a litigation setup letter. And	16:41:32
6		it's -- it's an old game, and it's not -- I don't	16:41:34
7		know. It may work -- it may work, sir. But, you	16:41:37
8		know, it's very self-serving.	16:41:41
9	Q.	Are you saying that if this letter had	16:41:43
10		come from Mother Teresa, you were authorized to	16:41:45
11		have a sitdown between the landlord and the	16:41:49
12		tenant?	16:41:51
13		MS. KROPF: Objection as to form.	16:41:53
14		BY MR. BOSCH:	16:41:55
15	Q.	All right. Let me rephrase that.	16:41:55
16		If this letter had come from a	16:41:57
17		transactional lawyer like yourself, were you	16:41:59
18		authorized to have a sitdown between the landlord	16:42:01
19		and the tenant?	16:42:07
20	A.	It's privileged.	16:42:08
21	Q.	Was there any consideration to doing	16:42:09
22		that but for the fact that there was a litigator	16:42:11

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

A432

Transcript of Robert W. Barron
Conducted on April 14, 2023

380

1	A.	I do.	16:59:08
2	Q.	And that language?	16:59:09
3	A.	I do.	16:59:10
4	Q.	Did you share it with anybody?	16:59:11
5		MS. KROPF: Objection. I instruct him	16:59:13
6		not to answer.	16:59:13
7		BY MR. BOSCH:	16:59:15
8	Q.	Wasn't RSD, in fact, hiding behind you	16:59:15
9		and your law firm?	16:59:18
10	A.	No, sir. But this letter really	16:59:19
11		revealed that the landlord was going to renege on	16:59:21
12		their covenant.	16:59:24
13		Once again, the landlord covenant that	16:59:25
14		we -- not us, but the lender had the absolute	16:59:28
15		right -- not just the right, but absolute right,	16:59:31
16		to transfer to a third party, and so long as -- if	16:59:33
17		they transferred, as long as the assignee assumed	16:59:38
18		the obligations, they would be released. Not just	16:59:42
19		released, but automatically released.	16:59:46
20		So here you are in your letter saying,	16:59:48
21		notwithstanding that we coveted it, to let you do	16:59:51
22		this, we're now going to sue you for fraudulent	16:59:55

Transcript of Robert W. Barron
Conducted on April 14, 2023

381

1	conveyance, which is exactly what everyone was	16:59:57
2	concerned, that these people do not operate in	17:00:00
3	good faith. They will not honor the covenant they	17:00:03
4	have in the plain language of the lease. But	17:00:06
5	instead, they're litigious. And bingo, on	17:00:08
6	June 6th, 2019, you came out and did it. And here	17:00:13
7	we go.	17:00:16
8	Q. Let me go back to my question,	17:00:17
9	Mr. Barron. Was RSD hiding behind you and your	17:00:19
10	law firm?	17:00:22
11	A. No, sir.	17:00:23
12	Q. So RSD was prepared to come forward and	17:00:23
13	say, We are IWA and the Longshore member?	17:00:26
14	MS. KROPF: Objection. And I instruct	17:00:33
15	him not to answer.	17:00:34
16	BY MR. BOSCH:	17:00:35
17	Q. Well, hold on a second, now,	17:00:35
18	Mr. Barron. Were you doing something that was not	17:00:36
19	consistent with what your client had instructed?	17:00:40
20	MS. KROPF: Objection. And I instruct	17:00:44
21	him not to answer.	17:00:45
22		

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

A434

EXHIBIT 3



Planet Depos®
We Make It *Happen™*

Transcript of Troy Taylor

Date: April 6, 2023

Case: Rock Spring Plaza II LLC -v- Investors Warranty of America LLC, et al.

Planet Depos

Phone: 888.433.3767

Email: transcripts@planetdepos.com

www.planetdepos.com

WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

Transcript of Troy Taylor

April 6, 2023

74

1	revealing privileged communications?	10:27:59
2	A Actually I can. I take that back.	10:28:01
3	Q You had conversations with Mr.	10:28:03
4	Feltman about that, did you not?	10:28:04
5	A No, I did not.	10:28:05
6	One of the things -- when we first	10:28:09
7	got brought into this, we were told that the	10:28:23
8	Camaliers were very litigious.	10:28:28
9	I knew there was existing	10:28:33
10	litigation going on. Didn't know anything	10:28:35
11	about the specifics. I knew there was	10:28:37
12	existing litigation and I knew that there	10:28:38
13	was -- that at least IWA's perception was	10:28:42
14	that the Camaliers were very litigious.	10:28:47
15	I took that to say, okay.	10:28:53
16	And after the assignment, what	10:28:57
17	happened was that Mr. Bosch, you were the	10:29:03
18	one that initially reached out to Robert	10:29:08
19	Barron. And in my 25-plus years of	10:29:11
20	experience, I've never seen any first chair	10:29:15
21	litigator be the first person to respond in	10:29:18
22	what should be a commercial business	10:29:22

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

A437

Transcript of Troy Taylor
April 6, 2023

75

1	situation.	10:29:25
2	So it made me basically say, okay,	10:29:25
3	I understand now why my joint venture	10:29:28
4	partner thinks that these folks are	10:29:31
5	litigious in nature, because why would the	10:29:35
6	litigator be responding? I mean, you know,	10:29:37
7	it kind of muddied the waters.	10:29:41
8	So it made me think that basically	10:29:42
9	that the Camaliers were not interested in a	10:29:44
10	real conversation; otherwise, they would	10:29:49
11	have called directly, they would have had	10:29:50
12	maybe one of your real estate partners call,	10:29:52
13	but the fact that it was a litigator	10:29:54
14	reaching out, that sent red flags to me.	10:29:57
15	So in the back of my mind, it gave	10:30:01
16	more credence to the fact of what IWA had	10:30:04
17	been telling me. But I didn't -- but just	10:30:06
18	to finish, I didn't know any specifics, I	10:30:08
19	didn't know -- but it made me understand	10:30:12
20	that, okay, these guys approach everything	10:30:14
21	from a litigation angle versus from what I	10:30:16
22	call a business angle.	10:30:18

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

A438

Transcript of Troy Taylor
April 6, 2023

76

1	Q	So at the time that you were	10:30:20
2		negotiating the formation of RSD and	10:30:22
3		the assignment of the ground lease, you	10:30:27
4		understood from Mr. Feltman that the Camas	10:30:29
5		were litigious from that respect?	10:30:31
6	A	I think the general concept, yes.	10:30:34
7	Q	And so in connection with	10:30:37
8		negotiating, you understand there was a risk	10:30:39
9		of litigation pertaining to this property,	10:30:41
10		6560 Rock Springs Drive?	10:30:44
11		MS. KROPP: Objection as to	10:30:47
12		form.	10:30:47
13	A	Yes.	10:30:47
14	BY MR. BOSCH:		10:30:47
15	Q	And did you have any discussions	10:30:47
16		with Mr. Feltman about the types of claims	10:30:49
17		that this transaction might give rise to as	10:30:53
18		you were negotiating the transaction?	10:30:59
19	A	None.	10:31:00
20	Q	You just knew there was a general	10:31:05
21		risk of litigation?	10:31:06
22	A	I just knew that the ground lessor	10:31:08

Transcript of Troy Taylor

April 6, 2023

77

1 was very litigious and they made -- that was 10:31:12
2 their MO of how they did business, and that 10:31:15
3 was it. 10:31:17

4 Q And you understood -- that's the 10:31:18
5 understanding you got from Mr. Feltman? 10:31:19

6 A I got that understanding, so I 10:31:22
7 assume came from Mr. Feltman. I can't 10:31:24
8 imagine where else it could have come from. 10:31:26

9 Q And had Mr. Feltman told you that 10:31:29
10 they had previously walked away from a 10:31:31
11 different ground lease in which the 10:31:34
12 Camaliers had an interest? 10:31:35

13 MS. KROPF: Objection as to 10:31:38
14 form. 10:31:38

15 A No. 10:31:38

16 BY MR. BOSCH: 10:31:39

17 Q Had he told you there was a lawsuit 10:31:39
18 pending involving that other ground lease? 10:31:41

19 A I don't know if he told me -- I 10:31:45
20 knew at some point I became aware of it. I 10:31:46
21 don't know where I became aware it. 10:31:49

22 Q And your testimony is you didn't 10:31:52

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

A440

Transcript of Troy Taylor
April 6, 2023

78

1	think about the risk of litigation again	10:31:54
2	until I sent a letter to Mr. Barron after	10:31:55
3	the assignment?	10:31:57
4	MS. KROPF: Objection as to	10:31:59
5	form.	10:31:59
6	A That's not what I said.	10:32:00
7	I said it reinforced to me that	10:32:01
8	basically what my joint venture partner was	10:32:02
9	saying had some credence.	10:32:04
10	I typically have partners and	10:32:06
11	clients that have preconceived notions that	10:32:08
12	are often conspiracy theories that they've	10:32:10
13	worked up in their minds that tend not to be	10:32:17
14	reality, but in this particular case, it	10:32:19
15	reinforced what their reality was telling	10:32:22
16	me.	10:32:25
17	BY MR. BOSCH:	10:32:25
18	Q You said it "sent up red flags," so	10:32:26
19	what did you do after the red flags went up?	10:32:28
20	MS. KROPF: Objection as to	10:32:31
21	form.	10:32:31
22	A It made us basically conduct	10:32:32

Transcript of Troy Taylor
April 6, 2023

80

1	today, you have no understanding of what the	10:33:11
2	fraud claims are about?	10:33:14
3	A I don't understand -- and again I'm	10:33:15
4	not a lawyer. I didn't go to one of those	10:33:16
5	fancy law schools.	10:33:20
6	I don't understand how -- again,	10:33:22
7	from kind of a simple boy from	10:33:23
8	Philadelphia --	10:33:26
9	Q With two Wharton degrees, right?	10:33:29
10	A -- I got lost.	10:33:32
11	I don't understand how there could	10:33:34
12	be a fraud claim when in the estoppel	10:33:35
13	agreement -- which I read before the	10:33:39
14	assignment and candidly I read numerous	10:33:40
15	times since this litigation began -- that	10:33:44
16	says -- and I may paraphrase it wrong -- but	10:33:46
17	it says, the absolute right to transfer to	10:33:49
18	any third-party, it doesn't say "a	10:33:52
19	third-party," it doesn't say "a	10:33:55
20	well-capitalized third party," it doesn't	10:33:58
21	say "an unrelated third party," it says	10:33:59
22	"any."	10:34:01

Transcript of Troy Taylor
April 6, 2023

223

1	Q	Fair enough.	01:28:37
2		Did you have any discussions with	01:28:37
3		anyone from the management committee about	01:28:40
4		how long the IWA member would continue to	01:28:43
5		fund RSD?	01:28:45
6	A	At what point in time are you	01:28:47
7		asking? Any time?	01:28:48
8	Q	At any time prior to the filing of	01:28:49
9		this lawsuit.	01:28:51
10	A	I had the impression -- though	01:28:54
11		there's nothing guaranteed -- I had the	01:28:57
12		impression from Mr. Feltman that IWA would	01:29:00
13		fund this until such time that we had a --	01:29:04
14		I'll call it "resolution" of this situation.	01:29:08
15	Q	How was "resolution" defined?	01:29:12
16	A	We never defined it, but it was	01:29:15
17		basically -- let me back up.	01:29:17
18		There was nothing ever promised,	01:29:25
19		but my understanding was that basically they	01:29:26
20		would be willing to fund this thing as long	01:29:30
21		as it took them.	01:29:33
22	Q	As long as what took?	01:29:34

Transcript of Troy Taylor
April 6, 2023

258

1	it's legally required to record the	01:55:48
2	transcript of this ground lease?	01:55:50
3	MS. KROFF: Objection as to	01:55:54
4	form. I'm going to instruct him not	01:55:54
5	to answer.	01:55:55
6	I think getting into the substance	01:55:56
7	of his communications with Berger	01:55:58
8	Singerman in any way is privileged, and	01:56:00
9	I'll instruct him not to answer.	01:56:02
10	You've gotten -- I'll instruct him	01:56:04
11	not to answer.	01:56:08
12	(Directive.)	01:56:04
13	BY MR. BOSCH:	01:56:08
14	Q Which lawyer is providing counsel	01:56:09
15	to you on whether or not to record the	01:56:10
16	ground lease?	01:56:12
17	A Mr. Barron.	01:56:14
18	Q Anyone else?	01:56:14
19	A No.	01:56:15
20	Q You testified that you had retained	01:56:17
21	a law firm, Wilkes Artis, in connection with	01:56:22
22	the property taxes?	01:56:27

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

A444

Transcript of Troy Taylor
April 6, 2023

259

1	A	Yes.	01:56:28
2	Q	And was the payment of transfer and	01:56:30
3		recordation taxes within the scope of their	01:56:34
4		engagement?	01:56:37
5	A	Mr. Rubin handled all of the stuff	01:56:38
6		with Wilkes Artis, so you would have to ask	01:56:41
7		him. I don't know.	01:56:43
8	Q	You testified that Wilkes Artis was	01:56:44
9		unaware or confirmed that there was no need	01:56:47
10		to record this ground lease, or wouldn't?	01:56:50
11	A	No, I said that they never alerted	01:56:52
12		us that there was a problem, that this was a	01:56:55
13		problem.	01:56:56
14	Q	And why would they be aware of this	01:56:56
15		issue of the transfer and recordation taxes?	01:57:00
16	A	Because they basically were the --	01:57:04
17		handled the property tax issue when it was	01:57:05
18		Aegon. They saw the paperwork when it was	01:57:09
19		Aegon. They were being retained by RSD and	01:57:13
20		being paid by RSD. They never raised it.	01:57:15
21		The exact scope of what our	01:57:18
22		engagement with them is, is something you	01:57:22

Transcript of Troy Taylor

April 6, 2023

260

1 would have to ask Mr. Rubin. I don't know. 01:57:24

2 Q But as a restructuring expert, you 01:57:27

3 do understand the difference between 01:57:29

4 property taxes and transfer and recordation 01:57:31

5 taxes; do you not? 01:57:34

6 A As a restructuring expert, I know 01:57:34

7 you hire a first class law firm and they 01:57:36

8 spot a problem, even if it's not exactly the 01:57:39

9 scope of what it is, they come raising their 01:57:42

10 hands and they say, You have a problem. You 01:57:42

11 didn't engage us for this, but you have a 01:57:45

12 problem. You should fix it. 01:57:48

13 I know your law firm would do that. 01:57:49

14 All the law firms I've ever worked with have 01:57:51

15 done that. 01:57:55

16 So basically, if they thought it 01:57:55

17 was a problem -- the assumption is if they 01:57:57

18 would have spotted it, they would have told 01:58:00

19 us there was a problem. 01:58:01

20 Q And earlier you testified that the 01:58:03

21 reason you wouldn't want to record this 01:58:05

22 ground lease is you didn't want to have to 01:58:07

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

A446

Transcript of Troy Taylor

April 6, 2023

261

1	pay the costs?	01:58:09
2	MS. KROPF: Objection as to	01:58:10
3	form.	01:58:10
4	A I didn't want to do anything I	01:58:11
5	didn't have to do, and especially if I had	01:58:14
6	to pay a cost.	01:58:15
7	BY MR. BOSCH:	01:58:15
8	Q And the cost you understood would	01:58:15
9	be for transfer and recordation taxes?	01:58:15
10	A I don't know what they're called,	01:58:17
11	but I assume that's the right definition.	01:58:18
12	But I don't know -- I know there's	01:58:22
13	a cost around recording, and I don't know	01:58:23
14	what it's called.	01:58:27
15	Q So you don't know there's a tax?	01:58:28
16	A I know there is a tax, I just don't	01:58:29
17	know what the legal term of the tax is.	01:58:31
18	Q Is it your testimony that you have	01:58:33
19	received counsel about whether a transfer	01:58:35
20	and recordation tax was payable on this	01:58:39
21	transfer?	01:58:42
22	MS. KROPF: So I'm going to	01:58:43

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

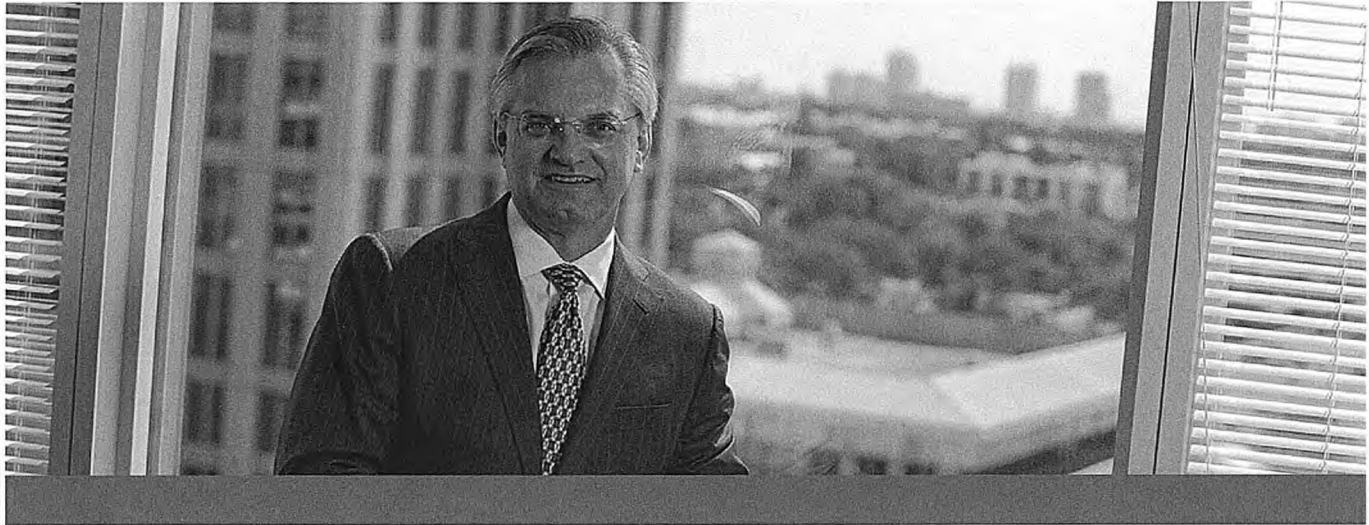
A447

Transcript of Troy Taylor
April 6, 2023

262

1	instruct you not to answer.	01:58:44
2	That gets into privileged	01:58:45
3	communications.	01:58:46
4	(Directive.)	01:58:47
5	BY MR. BOSCH:	01:58:48
6	Q So is one of the reasons you did	01:58:48
7	not want to record this ground lease is to	01:58:50
8	avoid paying transfer and recordation tax?	01:58:54
9	MS. KROPF: Object to form.	01:58:57
10	A Why would I want to do something	01:58:59
11	that's going to create a cost if I'm not	01:59:00
12	required to it?	01:59:04
13	Q And the sole basis for your	01:59:04
14	understanding that you're not required to	01:59:05
15	pay those taxes is on the advice of	01:59:05
16	Mr. Barron?	01:59:07
17	A Yes.	01:59:07
18	MS. KROPF: Objection as to	01:59:08
19	form.	01:59:08
20	BY MR. BOSCH:	01:59:09
21	Q I'm going to hand you now what has	01:59:09
22	been previously marked as IWA 36.	01:59:16

EXHIBIT 4



ROBERT W. BARRON

Partner

954-712-5145
rbarron@bergersingerman.com

201 East Las Olas Boulevard
Suite 1500
Fort Lauderdale, FL 33301

Robert W. Barron is a Florida-based business attorney with significant experience with real estate asset and financing transactions, corporate acquisition and disposition transactions, and business and debt restructurings.

Robert has significant experience in real estate asset transactions involving multifamily/apartments, condominium projects, shopping centers, office buildings, hotels, industrial properties, undeveloped land, and trading in debt secured by these types of assets. Robert represents borrowers and lenders in real estate mortgage financing transactions, including representing borrowers in commercial mortgage-backed securities (CMBS) loans. He also represents buyers and sellers in the acquisition and disposition of commercial real estate assets.

Within the commercial real estate industry, Robert represents clients with the acquisition and disposition of office, industrial, multifamily properties, luxury and near-luxury hotel properties and the negotiation of leases, property management agreements and hotel management contracts. He represents lenders and borrowers in commercial real estate loan transactions and workouts (including defeasance opportunities) as well as owners and developers in connection with leasing transactions, construction projects and related construction and architect agreements.

Robert assists clients with the negotiation, formation, and restructuring of complex corporate, limited partnership and LLC structures for corporate and real estate asset transactions, including the structuring and negotiation of shareholder agreements, limited partnership agreements and LLC operating agreements and the negotiation and settlement of internal disputes among shareholders, partners and LLC members. Robert has significant experience with acquisitions and dispositions of corporate businesses (including portfolio

bergersingerman.com

companies and subsidiaries), venture capital investment and investment partnership transactions, formation and capitalization of corporations, limited partnerships or limited liability companies and asset-based corporate financing for businesses. Robert represents corporate clients with their on-going corporate and operational matters, including corporate governance issues and the structuring, preparation and negotiation of employment agreements, non-competition agreements, severance agreements, confidentiality, distribution, sales, license, manufacturing and other general business contracts.

He represents clients involved in distressed corporate and partnership restructuring transactions – representing from time to time either the buy-side or the sell-side – whether in connection with a bankruptcy proceeding (including the representation of debtors or purchasers in Section 363 asset auction transactions in connection with a bankruptcy proceeding) or outside of the bankruptcy process. Robert works closely with the Business Reorganization Team of the Berger Singerman in connection with such restructuring matters. He has worked with borrowers, guarantors, and lenders to work out or restructure distressed loans with an aggregate outstanding balance in excess of a billion dollars.

Robert also advises not-for-profit companies, educational organizations and other charities in connection with the use of entrepreneurial strategies to obtain capital and to accomplish their mission and purpose, including through the use of program-related investments provided by private foundations and funds provided by donor-advised funds.

Education

J.D., Louisiana State University Law Center, 1987

- 1984 *Valedictorian*, *Candidate for LSU Law Review*, *Chancellor's List*, the LSU Law Center Hall of Fame and the Louisiana Law Institute in 1987.
- Order of the Coif

B.S., Oral Roberts University, 1984

Bar Admissions

Florida
Louisiana
Texas

Practice Teams

Business, Finance & Tax

Practice Areas

Corporate
Distressed M&A & Restructuring
Healthcare
Hospitality & Leisure
Mergers & Acquisitions
Real Estate
Securities & Capital Markets

Representative Matters

bergersingerman.com

- Representation of venture capital funds with respect to investments in early stage financial services, artificial intelligence and other emerging technology companies.
- Representation of the sale of a medical products company with medical clinics in multiple locations with overseas manufacturing facility for medical products.
- Representation of the sale of a manufacturing facility with operating business structured as a Section 363 sale in a Chapter 11 proceeding.
- Representation of the owners of civil engineering and surveying company in the sale of their business to a private equity firm.
- Representation of the owners of a medical products company in the sale of their business to a private equity firm.
- Representation of large tract real property developers in the negotiation of operating agreements with private equity firms and other investors.
- Representation of the purchasers of multi-family apartment projects in various southern states, including negotiation of the acquisition financing for such acquisitions.
- Representation of land owner in the negotiation and sale of 3,700 continuous acres in Palm Beach County, Florida.
- Representation of the owner of approximate 2,300 acre resort property located in Costa Rica in connection with modification of its existing financing arrangements.
- Representation of physician medical practice in connection with the sale of the practice through an asset transaction and the negotiation of a physician employment agreement.
- Representation of beneficial owners of Texas refinery in connection with the sale of the refinery.
- Representation of real estate partnerships and LLCs in connection with the refinance of various mortgage loans using CMBS lenders for the refinancing.
- Representation of owner of commercial office/retail building in connection with the refinance of its existing mortgage financing using a CMBS mortgage loan.
- Representation of property owners obtaining "hard money" loans to facilitate the quick refinancing of real property to meet the time constraint requirements of the existing lenders.
- Representation of lender providing construction and mini-permanent financing for the construction of a commercial office building.
- Representation of owner in connection with the construction of a port facility in Barbados using FIDIC construction contracts.
- Representing of owner in connection with a port dredging contract off the coast of Bermuda using FIDIC construction contracts.
- Representation of owners in the negotiation and drafting of AIA construction contracts with contractors and construction managers in connection with a construction project.
- Representation of owners in the negotiation and drafting of AIA architect agreements with architects in connection with a construction project.
- Representation of development company and property owner in connection with the negotiation of a development agreement with an investor to locate, develop, construct, lease and sell apartment communities.
- Representation of distributor in connection with the negotiation and drafting of a distribution agreement.
- Representation of licensee in connection with the negotiation and drafting of a license agreement.
- Representation of borrowers, sellers and/or buyers as local Florida counsel to provide local Florida law assistance for the transaction.
- Representation of borrowers in connection with the review of loan documents to provide Florida third party legal opinions in connection with the closing of loan transactions to the extent appropriate under applicable Florida Bar customary practice.

- Modification of existing Florida limited liability company operating agreements to address issued presented by the new Revised Florida Limited Liability Company Act.
- Representation of various homebuilders and real property developers with indebtedness exceeding hundreds of millions of dollars in connection with restructuring transactions.
- Serve as title agent for major title insurance companies to arrange for the provision of title insurance in connection with the closing of real estate transactions.

Awards & Honors

- *The Best Lawyers in America*®, 2013-2023
 - *Best Lawyers'* 2022 Corporate Law Lawyer of the Year, Fort Lauderdale
 - *Best Lawyers'* 2019 Corporate Law Lawyer of the Year, Fort Lauderdale
- *Florida Super Lawyers*, 2007-2020, 2022
- *South Florida Legal Guide*, Top Lawyer, Commercial Real Estate and Corporate Transactions, 2007-2016
- *Daily Business Review*
 - Winner, Top Dealmaker Award: Leasing, 2014
 - Finalist, Top Dealmaker Award, 2013
 - Finalist, Most Effective Lawyer Award in Bankruptcy, 2011
- *Martindale-Hubbell*, AV® Preeminent™ rated
 - Top Rated Lawyer in Corporate Restructuring and Bankruptcy, 2013
- Chapter 11 Reorganization of the Year (Middle Market) for HearUSA, *M&A Advisor's* 6th Annual Turnarounds Awards (2012)
- *Florida Trend*, Legal Elite, 2006 – 2008, 2010-2011, 2013
- *Real Estate Florida*, Top Real Estate Lawyer in the State of Florida, 2008
- Salute to Business Award from the Chamber for activities related to Leadership Fort Lauderdale, 2006

Community Activities / Associations

- Member of the Board of Trustees, Oral Roberts University, Tulsa, Oklahoma (2015 to present)
- Chairman of Finance Committee; Member of the Executive Committee of Oral Roberts University (2016 to present)
- Member of the Board of Directors, Henderson Behavioral Health, the largest, community-based not-for-profit behavioral healthcare system in South Florida
- Board of Governors, Health Professions Division, Nova Southeastern University; Dean's Leadership Council, Nova Southeastern University College of Osteopathic Medicine (2011 to present)
- Member of the Ambassadors Board - Nova Southeastern University (2013- present)
- Business Law Section of The Florida Bar
 - Executive Council (2006-present)
 - Chair of Corporations, Securities and Financial Services Committee of the Business Law Section of the Florida Bar - (2016-2017)
 - Chair or Co-Chair of Opinion Standards Committee of Business Law Section of the Florida Bar (2013 to present) and Vice Chair of Opinion Standards Committee of Business Law Section of Florida Bar - (2006-2013)
 - Second Vice Chair of Legislation Committee of Business Law Section of the Florida Bar (2021-present)
- Member of the Board of Directors of Habitat for Humanity of Broward, Inc.

- Member of the Advisory Board of Jim Moran Institute for Global Entrepreneurship at Florida State University
- Gamma Beta Phi Society
- Member of the Board of Directors of Tower Forum
- Member of Board of Elders - Two Rivers Church of South Florida - Cooper City, FL
- Former Chairman of the Board of the Greater Fort Lauderdale Chamber of Commerce (2010) Former Member of the Board of Greater Fort Lauderdale Chamber of Commerce
- Former Member of the Executive Committee and Finance Committee of the Chamber Leadership Florida Class XXI
- Leadership Fort Lauderdale - Curriculum Chair Class X Leadership Fort Lauderdale - Class VII
- Former Chair of the Advisory Committee, Leadership Fort Lauderdale Lifework Leadership
- Former Chairman of the Board of Directors of Sheridan Family Ministries, Inc.
- Former Member of the Board of Directors of Sheridan House Family Members, Inc.
- Former Member, Community Engagement Advisory Board, Trinity International University - Florida Former Member, Children's Bereavement Center Broward Advisory Board
- Former Member of the Board of Trustees, South Florida Chapter of Leukemia and Lymphoma Society

In the News

Forty-Three Berger Singerman Attorneys Recognized in the 2023 Edition of Best Lawyers In America
August 18, 2022

Twenty-three Berger Singerman Attorneys Recognized in 2022 Edition of Florida Super Lawyers
June 27, 2022

M&A Advisor Recognizes Berger Singerman LLP for its Work on the Chapter 11 Bankruptcy Case of Unipharm
June 15, 2022

39 Berger Singerman Attorneys Recognized in the 2022 Edition of Best Lawyers In America
August 19, 2021

Thirty-Five Berger Singerman Attorneys Recognized in the 2021 Edition of Best Lawyers In America
August 19, 2020

Twenty-Seven Berger Singerman Attorneys Recognized in 2020 Edition of Florida Super Lawyers
June 8, 2020

Thirty Berger Singerman Attorneys Recognized in the 2020 Edition of Best Lawyers In America
August 14, 2019

Twenty-Eight Berger Singerman Attorneys Recognized in 2019 Edition of Florida Super Lawyers
May 29, 2019

Thirty Berger Singerman Attorneys Recognized in the 2019 Edition of Best Lawyers In America
August 14, 2018

Thirty-One Berger Singerman Attorneys Recognized in 2018 Edition of Florida Super Lawyers
June 17, 2018

Thirty Berger Singerman Attorneys Recognized in the 2018 Edition of Best Lawyers In America
August 14, 2017

REH Capital Partners, Algon Group and Berger Singerman Win M&A Advisor Latin America Deal of the Year
July 5, 2017

Thirty-Two Berger Singerman Attorneys Recognized in the 2017 Super Lawyers Florida Edition
June 8, 2017

Berger Singerman Attorneys Help Land \$247 Million Loan for PortMiami Terminal
September 12, 2016

Twenty-Eight Berger Singerman Attorneys Recognized in the 2017 Edition of Best Lawyers In America
August 14, 2016

Thirty-Six Berger Singerman Attorneys Recognized in the 2016 Super Lawyers Florida Edition
June 13, 2016

Publications

Berger Singerman's Real Estate Team Authors Chambers and Partners' 2022 Florida-US Regional Real Estate Chapter
August 11, 2022

Steering Committee Member and Vice Chair of Legal Opinion Standards Committee of the Business Law Section of the Florida Bar with respect to "Third Party Legal Opinion Customary Practice in Florida", Report of the Legal Opinion Standards Committee of The Florida Bar Business Law Section and the Legal Opinions Committee of The Florida Bar Real Property, Probate and Trust Law Section.

Contributing Author of "Laws Commonly Excluded from the Coverage of Third-Party Legal Opinions in U.S. Commercial Loan Transactions", The Business Lawyer
July 30, 2021

Contributing Author of "Common Qualifications to a Remedies Opinion in U.S. Commercial Loan Transactions," The Business Lawyer, Volume 70, Issue 1
Winter 2014-2015

Co-Chair of the Legal Opinion Standards Committee of the Business Law Section of the Florida Bar with respect to the "First Supplement to the Third Party Legal Opinion Customary Practice in Florida, November 11, 2019", Report of the Legal Opinion Standards Committee of The Florida Bar Business Law Section and the Legal Opinions Committee of The Florida Bar Real Property, Probate and Trust Law Section
December 3, 2011

Events & Speaking Engagements

Robert Barron, Speaker, Greater Fort Lauderdale Chamber of Commerce Annual Meeting
February 9, 2017

Doing Business in Florida Blog

Public-Private Partnerships: An Alternative to Tax-funded Infrastructure
May 24, 2021

Prior Affiliations

- Thompson & Knight LLP - Dallas, Texas
- Weil, Gotshal & Manges - Dallas, Texas

EXHIBIT 5



Planet Depos
We Make It *Happen*™

Transcript of David Feltman, Designated Representative

Date: March 16, 2023

Case: Rock Spring Plaza II LLC -v- Investors Warranty of America LLC, et al.

Planet Depos

Phone: 888.433.3767

Email: transcripts@planetdepos.com

www.planetdepos.com

WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

Transcript of David Feltman, Designated Representative
Conducted on March 16, 2023

290

1 But I don't think it was that early.

2 Q. At this time --

3 A. January of 2017.

4 Q. At this time, January 2017, did IWA
5 understand that there was the potential for
6 litigation involving the transfer of IWA's ground
7 lease interest?

8 A. I don't know.

9 Q. Was there any discussion in and around
10 this time about a potential fraudulent conveyance or
11 fraudulent transfer claim?

12 MS. DAVIS: Objection as to form.

13 THE WITNESS: I don't know.

14 Q. (By Mr. Borsch) You have -- do you have
15 any recollection of there ever being discussion about
16 a potential fraudulent conveyance claim in connection
17 with the transfer of IWA's ground lease interest?

18 A. Yes.

19 Q. When was that?

20 A. Oh, I think at various points it came up
21 in our analysis.

22 Q. Prior to the assignment to RSD?

Transcript of David Feltman, Designated Representative
Conducted on March 16, 2023

291

1 A. Yes.

2 Q. And did it come up a multitude of times?

3 A. Couple of times, I think.

4 Q. And do you recall when?

5 A. I think maybe as early as 2016, but
6 certainly in advance of the operating agreement with
7 RSD, and in an analysis of risks associated with the
8 operating agreement.

9 Q. Who performed that analysis of the risks
10 associated with the operating agreement?

11 A. Well, conceptually, I think it was
12 probably Seyfarth, along with our in-house counsel.
13 And then we had some discussion around that and other
14 risks.

15 Q. What other risks?

16 A. Bankruptcy risk, counter-party risk.

17 Q. And was the Seyfarth counsel Mr. Sowka?

18 A. Yes.

19 Q. Do you recall anybody else from Seyfarth
20 being involved in advising IWA about the risks of a
21 potential fraudulent conveyance claim in connection
22 with the transfer of IWA's ground lease interest?

Transcript of David Feltman, Designated Representative
Conducted on March 16, 2023

350

1 it.

2 Q. And what specifically did you discuss?

3 A. Well, we had already -- we had already, I
4 think, been sued on the Rock Ledge matter, I think,
5 at that time. And I discussed that with Troy, and
6 the fact that the Camaliers were litigious and that
7 this was clearly a possibility.

8 Q. So at the time of your negotiations with
9 Algon, specifically with Mr. Taylor, you were mindful
10 of the risk of a fraudulent transfer claim, correct?

11 A. Yes.

12 Q. And you were mindful of the risk of
13 litigation with the landlord?

14 A. Very much so.

15 Q. And was part of the concern of the risk of
16 litigation with the landlord a fraudulent transfer
17 claim?

18 A. That was a little more in the weeds than
19 my legal understanding, but, generally, I was just
20 looking at what had happened on Rock Ledge and
21 saying, hey, you know, these guys were litigious, and
22 there's a possibility that they're going to sue.

Transcript of David Feltman, Designated Representative
Conducted on March 16, 2023

127

1 lease and the estoppel agreement that supports your
2 understanding that IWA has no obligation or no
3 responsibility for fulfilling tenant's financial
4 obligations following the assignment?

5 A. No.

6 Q. So it's just those two documents?

7 A. Yes.

8 Q. Was one of the reasons for the assignment
9 so that IWA would no longer have responsibility for
10 fulfilling tenant's financial obligations under the
11 ground lease?

12 A. No.

13 Q. That was not one of the reasons for the
14 assignment?

15 A. No.

16 Q. So what were the reasons for the
17 assignment?

18 A. There were several. We had had the
19 property in our system for some time by 2017. We had
20 been unsuccessful at leasing it up. We thought that
21 the Algon folks could do, frankly, a better job. We
22 were resource constrained. We were cutting staff.

Transcript of David Feltman, Designated Representative
Conducted on March 16, 2023

128

1 And this was a way of adding more skilled resources
2 to the task.

3 Q. That the assignment was the way to add
4 more --

5 A. The --

6 Q. -- resources?

7 A. -- the formation of RSD and the assignment
8 to RSD, yes.

9 Q. To bring more resources to the task?

10 A. Yeah. More skilled resources, yes.

11 Q. And were there any other reasons?

12 A. Sort of along the same lines, we wanted a
13 party who was incentivized properly to add value.
14 And we knew that that skill set existed within Algon.
15 And that Algon also had strong capital markets
16 relationships so that, to the extent we were able --
17 they were able to identify a tenant and tenant the
18 property, that they could, through their capital
19 markets relationships, find ways to finance the cost
20 associated with that. And ultimately sell the
21 property, once it had been leased up and improved.

22 Q. And your testimony here is that there were

Transcript of David Feltman, Designated Representative
Conducted on March 16, 2023

182

1 THE WITNESS: I don't know that I've
2 heard it specifically in terms of a ground
3 lease.

4 Q. (By Mr. Bosch) What do you understand the
5 term "exit strategy" to mean generally?

6 A. In real estate?

7 Q. Sure.

8 A. A disposition of some sort.

9 Q. And what do you mean disposition?

10 A. Sale of the property, a -- some other
11 outcome that's a disposition outcome.

12 Q. What other outcome would be a disposition
13 outcome other than a sale?

14 A. I think it primarily focuses on a sale as
15 an exit.

16 Q. I'm asking you is there anything other
17 than a sale?

18 A. No. Not really. When I think of exit
19 strategy for real estate, I think of a disposition.
20 That's what we talk about when we talk about plans
21 for a property, outcomes, it's a sale of a property.

22 Q. Was there ever a determination made by IWA

Transcript of David Feltman, Designated Representative
Conducted on March 16, 2023

183

1 that the disposition of the ground lease would be its
2 exit strategy?

3 MS. DAVIS: Objection as to form.

4 THE WITNESS: I don't understand
5 what you mean when you say "disposition of
6 the ground lease." You mean the -- the
7 property, the leasehold, the improvements?

8 Q. (By Mr. Bosch) I am using your
9 understanding of the term exit strategy in the
10 context of real estate. And I'm asking you was IWA
11 -- did IWA ever adopt, as an exit strategy, the
12 disposition of the ground lease, using your
13 definition of disposition?

14 A. We didn't --

15 MS. KROPF: Objection to form.

16 THE WITNESS: -- own the ground
17 lease. We owned the improvements, so.

18 Q. (By Mr. Bosch) What is the basis for your
19 understanding that IWA didn't own the ground lease?

20 A. Well, the ground lease is an instrument.
21 What we owned were -- was a leasehold interest
22 through the ground lease and the improvements.

Transcript of David Feltman, Designated Representative
Conducted on March 16, 2023

184

1 Q. All right. So let me rephrase my
2 question, then.

3 Was -- did IWA ever adopt as an exit
4 strategy from its leasehold interest the disposition
5 of that leasehold interest?

6 MS. DAVIS: Object as to form.

7 THE WITNESS: We did not adopt an
8 exit strategy for this property.

9 Q. (By Mr. Bosch) Did you adopt an exit
10 strategy for this leasehold interest?

11 A. No, I don't think we actually adopted an
12 exit strategy.

13 Q. And you say --

14 A. When you say "adopted," what do you mean
15 by adopted?

16 Q. What do you understand by the term
17 adopted, Mr. Feltman?

18 A. Did we -- okay. So, let's do that. So, a
19 plan, written or otherwise, to dispose of the
20 property. We did not have a written plan to dispose
21 of the property. Our assumption was, at some point
22 in the future, when the property was leased up, and

Transcript of David Feltman, Designated Representative
Conducted on March 16, 2023

185

1 created value, that we would ultimately sell the
2 leasehold interest on the property that we held.

3 Q. So, IWA never had a plan to dispose of its
4 leasehold interest by selling it?

5 A. We did not have a written plan for that
6 effect, and we didn't really have a conceptual plan
7 because we did not know what the numbers were going
8 to look like because we didn't have the plan.

9 Q. So, I think I heard you say there was
10 never any written plan encompassing an exit strategy
11 for IWA's leasehold interest, correct?

12 A. Yes.

13 Q. There was no written plan?

14 A. Until the memo and the formation of the
15 joint venture and that plan. I guess that would be
16 considered a plan.

17 Q. Was that considered the exit strategy for
18 IWA's leasehold interest?

19 MS. DAVIS: Objection as to form.

20 THE WITNESS: Not the ultimate exit
21 strategy, no. Because at the end of the
22 day, RSD -- we were going to be a member of

Transcript of David Feltman, Designated Representative
Conducted on March 16, 2023

186

1 RSD; we still had an economic interest in
2 RSD. And ultimately, we wanted see RSD
3 lease up the property and sell the
4 property.

5 Q. (By Mr. Bosch) So the formation of RSD and
6 the assignment of the ground lease to RSD was part of
7 IWA's exit strategy?

8 MS. KROPF: Objection. Form.

9 THE WITNESS: To the extent that it
10 was a disposition by IWA, yes. But that
11 was just one step in what needed to occur
12 to execute what we would think of as a
13 disposition exit strategy, so that RSD
14 could then sell the property and monetize
15 the proceeds.

16 Q. (By Mr. Bosch) All right. So, other than
17 the assignment of the leasehold interest, RSD, were
18 any other exit strategies considered conceptually.

19 A. Oh, I'm sure we had discussion about
20 selling the property outright.

21 Q. Anything else?

22 A. I can't think of any other exit strategy

Transcript of David Feltman, Designated Representative
Conducted on March 16, 2023

222

1 that you'd want to share with corporate. Do you
2 recall sharing any?

3 A. I don't recall.

4 Q. Do you recall what exit strategies were
5 being considered at this time, July of 2016?

6 A. I think we were continuing to consider a
7 lease up of the property. And upon lease up, a sale
8 of the property.

9 Q. Were you considering a sale before lease
10 up?

11 A. We would have been willing to contemplate
12 that if someone were willing.

13 Q. And when you say lease up, you mean lease
14 up to the point where the ground lease becomes
15 self-sustaining?

16 A. Whatever the market would accept to create
17 value to sell the property.

18 Q. All right. So you said exit strategies
19 being considered at this time, July 2016, were
20 leasing up the property for potential sale to a
21 buyer?

22 A. Right. Or a sale to a buyer if a buyer

Transcript of David Feltman, Designated Representative
Conducted on March 16, 2023

223

1 were willing to buy it as it is.

2 Q. Were there any other exit strategies being
3 considered?

4 A. Not at that time, no.

5 Q. Were other exit strategies considered
6 thereafter?

7 A. Yes.

8 Q. And what were they?

9 A. Forming a joint venture. And contributing
10 the property to the joint venture so that the joint
11 venture could lease up and sell the property.

12 Q. Why form a joint venture to lease up and
13 sell the property when IWA already held the property?

14 A. Couple of reasons. The group that I
15 manage, the asset management group, had not succeeded
16 in leasing up the property, so I was concerned about
17 whether we had the right skill set internally to do
18 this. And so that kind of goes back to what we were
19 kind of talking about earlier, about bringing a third
20 party in, someone else, who had the right skills to
21 turn the property around, and was properly
22 incentivized to do so.

Transcript of David Feltman, Designated Representative
Conducted on March 16, 2023

273

1 cover page. And this is the appraiser report as of
2 December -- well, the date of the report is
3 December 22nd, 2016. Do you see that?

4 A. Yes.

5 Q. And it's as stabilized December 1, 2020,
6 but as-is November 29th, 2016.

7 A. Okay.

8 Q. And on the third page, IWA17100, you see
9 that the as-is value indication is negative four
10 point eight million, eight hundred thousand dollars?

11 A. Yes.

12 Q. And you recall this is the MPV appraisal
13 that was initially provided by that entity?

14 A. By what entity?

15 Q. MPV.

16 A. Yes.

17 Q. Who selected MPV?

18 A. Probably Don Guarino, because all of our
19 appraisals were typically ordered through our
20 appraisal department.

21 Q. I'm going to hand you now what I'll mark
22 as IWA 24, which is an e-mail bearing Bates No.

Transcript of David Feltman, Designated Representative
Conducted on March 16, 2023

406

1 Q. -- term sheet. So does that suggest to
2 you that that's Version 3 of the term sheet?

3 A. I don't know whether that's what .3 means.

4 Q. And the changes reflected in this markup
5 were all made by Algon; is that correct?

6 A. I don't know.

7 Q. Directing your attention to paragraph 4D,
8 which is the disposition agreement. You see there,
9 there was an insertion for after 38 months if the
10 Algon member opts to sell the property?

11 A. Yes.

12 Q. Was that Algon's insertion, or was that
13 your proposal?

14 A. Don't know.

15 Q. And do you know how 38 months was
16 determined as the appropriate period of time for
17 Algon to consider a disposition?

18 A. I think at that point, the litigation risk
19 would go away because we'd be beyond the fraudulent
20 transfer date, and also our expectation was that
21 there would be leasing activity, and by then the
22 property would be in a position to be sold.

CONFIDENTIAL - CONTAINS ATTORNEYS' EYES ONLY TESTIMONY

Transcript of David Feltman, Designated Representative, Volume 2

Conducted on March 17, 2023

684

1	exercising -- or evaluating exit strategies. Do you	02:05:26
2	remember saying that?	02:05:29
3	A I did, yes.	02:05:31
4	Q Could you explain why IWA is always	02:05:32
5	evaluating exit strategies with respect to	02:05:35
6	properties?	02:05:40
7	MR. BOSCH: Objection to form.	02:05:40
8	THE WITNESS: Sure. IWA wasn't in	02:05:41
9	the business of being a long-term owner	02:05:42
10	of real estate. And generally in real	02:05:44
11	estate the benefits, the economic	02:05:46
12	benefits, are both cash flow during the	02:05:49
13	term of ownership but also the residual	02:05:53
14	value and benefiting ultimately from the	02:05:55
15	sale of the property, appreciation of the	02:05:57
16	property and residual value.	02:06:00
17	So when we talk about exit, you	02:06:02
18	know, we're really talking about	02:06:05
19	disposition of a property at the end of	02:06:07
20	its -- whatever its appropriate life	02:06:10
21	cycle is based on maximizing value at	02:06:13
22	that time.	02:06:16

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

A472

EXHIBIT 6



Planet Depos[®]
We Make It *Happen*[™]

Transcript of Matt Pithan

Date: March 30, 2023

Case: Rock Spring Plaza II LLC -v- Investors Warranty of America LLC, et al.

Planet Depos

Phone: 888.433.3767

Email: transcripts@planetdepos.com

www.planetdepos.com

WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

Transcript of Matt Pithan
March 30, 2023

38

1	only person you recall receiving authorization	14:10:33
2	from is Mr. Shaffer?	14:10:35
3	MS. DAVIS: Objection to form.	14:10:37
4	A The current ones, yes.	14:10:39
5	Q I'm saying at any point in time, can you	14:10:42
6	identify anyone other than Mr. Shaffer who	14:10:46
7	authorized a capital contribution to RSD?	14:10:48
8	A I don't recall.	14:10:51
9	Q Mr. Pithan, do you recall hearing the term	14:10:55
10	exit strategy in the context of this property?	14:11:02
11	MS. DAVIS: Objection to form.	14:11:05
12	A I recognize exit strategy.	14:11:06
13	Q My question was: Do you recall hearing	14:11:13
14	the term exit strategy in the context of this	14:11:15
15	property?	14:11:17
16	MS. DAVIS: Objection to form.	14:11:18
17	A With specific to what?	14:11:23
18	Q Well, why don't you explain to me what you	14:11:27
19	understand the term exit strategy to mean.	14:11:30
20	MS. DAVIS: Objection to form.	14:11:33
21	A My understanding of exit strategy is the	14:11:33
22	plan to sell an asset.	14:11:38

EXHIBIT C

TRUSTEE'S DEED OF ASSIGNMENT

2012 SEP 12 PM 2:05

1MP FD SURC	42.00
RECORDING FEE	28.00
member of STATE FIRE	19,500.00
0(000); receipt of	19,568.00
Rec'd # 4407	716.50
Warranty of	3986
nses: situated in	02:05 PM

IWA0010702

44799 239

TOGETHER WITH all right, title, interest, and privileges of the grantor of the Deed of Trust in and to all streets, ways, roads, and alleys used in connection with or pertaining to such real property, all development rights or credits, air rights and water rights related to the applicable real property, and all rights, title and interest of the applicable grantor in and to all minerals, oil and gas, and other hydrocarbon substances in, on or under the real property, and all appurtenances, easements, rights and rights of way appurtenant or related thereto; all buildings, other improvements and fixtures located on the applicable real property on the date of sale and owned by the applicable grantor, including, but not limited to, all apparatus, equipment, and appliances used in the operation or occupancy of the real property.

TO HAVE AND TO HOLD said leasehold land and premises, together with all right, title, interest, and privileges of the grantor of the Deed of Trust in and to all streets, ways, roads, and alleys used in connection with or pertaining to such real property, all development rights or credits, air rights and water rights related to the applicable real property, and all rights, title and interest of the applicable grantor in and to all minerals, oil and gas, and other hydrocarbon substances in, on or under the real property, and all appurtenances, easements, rights and rights of way appurtenant or related thereto; all buildings, other improvements and fixtures located on the applicable real property on the date of sale and owned by the applicable grantor, including, but not limited to, all apparatus, equipment, and appliances used in the operation or occupancy of the real property, unto the Grantee, its successors and assigns, the leasehold estate as provided in the Ground Lease as described in Exhibit A.

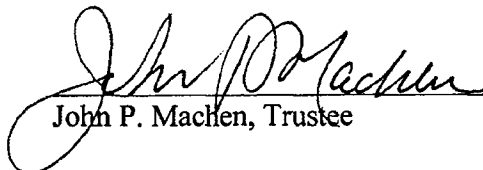
THE FOREGOING DESCRIBED PROPERTY IS CONVEYED SUBJECT TO all matters known and unknown, in "AS IS, WHERE IS" condition, without representation or warranty of any kind whatsoever, subject to all recorded and unrecorded easements, agreements, covenants, restrictions, rights-of-way, reservations, encumbrances, liens and other matters, any existing code violations and environmental and other conditions, and all applicable federal, state, and local laws, ordinances and regulations.

Without limiting the foregoing, the Grantor makes no warranty or representation, either expressed or implied, of any kind or nature regarding the foregoing described property, including, without limitation, the description, use, structural integrity, physical condition, construction, extent of construction, workmanship, materials, habitability, subdivision, zoning, environmental condition, compliance with building codes or other laws, ordinances, or regulations, fitness for a particular purpose or merchantability of all or any part of the foregoing described property.

The Grantor makes no representations or warranties concerning title to the foregoing described property and disclaims any and all implied warranties with respect thereto.

44799 240

WITNESS the hand and seal of the said party of the Grantor on the day and the year first above written.

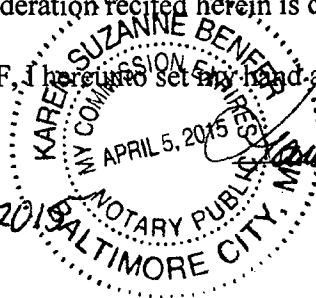
 **TRUSTEE**
(SEAL)
John P. Machen, Trustee

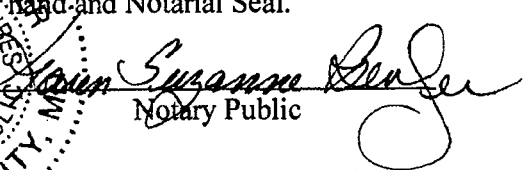
STATE OF MARYLAND)
CITY/COUNTY OF Baltimore) SS:

I HEREBY CERTIFY that on this 28th day of Aug, 2012, before me, the undersigned officer, personally appeared John P. Machen, Trustee, known to me (or satisfactorily proven) to be the person whose name is subscribed to this Trustee's Deed of Assignment and acknowledged that he executed the same for the purposes therein contained, giving oath under penalties of perjury that the consideration recited herein is correct.

IN WITNESS WHEREOF, I hereunto set my hand and Notarial Seal.


My Commission expires: 4-5-2015




Notary Public

ATTORNEY CERTIFICATION

I hereby certify that I am an attorney admitted to practice before the Court of Appeals of the State of Maryland and that this Trustee's Deed of Assignment was prepared under my supervision.


Christina Pappas

RETURN TO:
Melissa L. White
DLA Piper LLP (US)
6225 Smith Avenue
Baltimore, MD 21209

44799 241

Exhibit A

Legal Description

Leasehold interest in that real property located in Montgomery County, Maryland and more particularly described as follows:

All that certain lot or parcel of land situate and lying in Montgomery County, Maryland, and more particularly described as follows:

PARCEL I:

BEING part of Parcel 13, Rock Spring Park as recorded in Plat Book 148 as Plat No. 16968 among the Land Records of Montgomery County, Maryland and being more particularly described as follows:

BEGINNING at a point lying on the northeasterly right-of-way line of Fernwood Road as dedicated in Plat Book 88 as Plat No. 9340, said point also being a corner common to the property herein described and Parcel 14, Rock Spring Park as recorded in as Plat No. 21681; thence running with the northeasterly right-of-way line of Fernwood Road the following two (2) courses and distances:

1. 391.19 feet along the arc of a non-tangent curve to the left having a radius of 1,590.00 feet and a chord bearing and distance of North 38 degrees 29' 06" West, 390.20 feet to a point; thence
2. North 04 degrees 24' 43" West, 32.88 feet to a point of intersection with the southeasterly right-of-way line of Rock Spring Drive; thence running with the southeasterly right-of-way line of Rock Spring Drive
3. North 36 degrees 42' 33" East, 218.26 feet to a point; thence leaving said right-of-way line and running through Parcel 13, Rock Spring Park the following eight (8) courses and distances
4. 26.76 feet along the arc of a tangent curve to the right having a radius of 29.33 feet and a chord bearing and distance of South 79 degrees 25' 34" East, 25.84 feet to a point; thence
5. South 53 degrees 17' 27" East, 14.01 feet to a point; thence
6. 71.19 feet along the arc of a tangent curve to the left having a radius of 100.67 feet and a chord bearing and distance of South 73 degrees 33' 02" East, 69.72 feet to a point; thence
7. North 86 degrees 11' 23" East, 123.28 feet to a point; thence
8. North 41 degrees 11' 23" East, 55.08 feet to a point; thence
9. South 48 degrees 48' 37" East, 143.09 feet to a point; thence
10. South 41 degrees 11' 23" West, 35.53 feet to a point; thence
11. South 03 degrees 48' 38" East, 166.21 feet to a point lying on the northerly line of the aforementioned Parcel 14, Rock Spring Park; thence running with the lines of Parcel 14, Rock Spring Park the following three (3) courses and distances
12. North 87 degrees 05' 27" West, 211.25 feet to a point; thence
13. South 02 degrees 54' 33" West, 242.00 feet to a point; thence
14. South 58 degrees 33' 48" West, 23.39 feet to the point of beginning, containing 135,277 square feet or 3.10553 acres of land, more or less.

PARCEL II:

Easements granted by (i) Declaration of Covenants and Reciprocal Easement Agreements recorded in Liber 5263 at folio 351 and in Liber 8351 at folios 516, 543, 571, 602 and 626, and (ii) Sanitary Sewer

44799 242

Easements recorded in Liber 8351 at folio 683 and in Liber 8351 at folio 699, among the Land Records of Montgomery County, Maryland, and the reversionary interest in all improvements located on the property pursuant to the terms of the Amended and Restated Ground Lease as disclosed by Memorandum of Lease dated November 14, 1990 and recorded November 26, 1991 in Liber 10040 at folio 857.

NOTE FOR INFORMATIONAL PURPOSES ONLY: Tax Map No. 4-1-2785885

The Property is leasehold pursuant to an Amended and Restated Ground Lease Indenture dated as of November 14, 1990 between Rock Spring Plaza II, LLC as Landlord ("Landlord") and the grantor of the Deed of Trust, as Tenant, as evidenced by a Memorandum of Lease dated November 14, 1990 and recorded among the Land records in Liber 10040 at Folio 857, as amended by First Amendment to Amended and Restated Ground Lease Indenture dated September 1, 2002 between Landlord and the grantor of the Deed of Trust, as Tenant, as effected by Ground Lessor Estoppel and Non-Disturbance Agreement dated June 2, 2006 and recorded among the Land Records in Liber 32427, at Folio 523.

44799 243

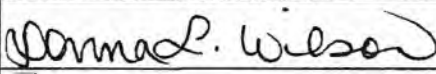

**Certification of Exemption from Withholding Upon Disposition of Maryland Real Estate
Affidavit of Residence or Principal Residence**

Based on the certification below, Transferor claims exemption from the tax withholding requirements of § 10-912 of Maryland's Tax General Article. Section 10-912 states that certain tax payments must be withheld when a deed or other instrument that affects a change in ownership of real property is recorded. The requirements of § 10-912 do not apply when a transferor provides a certification of Maryland residence or certification that the transferred property is the transferor's principal residence.

1. Transferor Information	
Name of Transferor	John J. Machen, Substitute Trustee

2. Reason for Exemption	
Resident Status	<input checked="" type="checkbox"/> I, Transferor, am a resident of the State of Maryland. <input type="checkbox"/> Transferor is a resident entity as defined in Code of Maryland Regulations (COMAR) 03.04.12.02B(11). I am an agent of Transferor, and I have authority to sign this document on Transferor's behalf.
Principal Residence	<input type="checkbox"/> Although I am no longer a resident of the State of Maryland, the Property is my principal residence as defined in IRC § 121.

Under penalty of perjury, I certify that I have examined this declaration and that, to the best of my knowledge, it is true, correct, and complete.

3a. Individual Transferors	
 Witness	 Name John J. Machen, Substitute Trustee
Witness	

3b. Entity Transferors	
Witness/Attest	Name of Entity
	By: Name and Title

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE

6500 CHERRYWOOD LANE
GREENBELT, MARYLAND 20770
301-344-0632

May 18, 2023

Anne Dunne
Seyfarth Shaw LLP
Suite 300
2 Seaport Lane
Boston, MA 02210

Anthony LaPlaca
Seyfarth Shaw LLP
2 Seaport Lane
Boston, MA 02110

Rebecca Davis
Seyfarth Shaw LLP
1075 Peachtree Street NE
Suite 2500
Atlanta, GA 30309

Renee Appel
Seyfarth Shaw LLP
975 F Street NW
Washington, DC 20006

Re: Rock Spring Plaza II, LLC v. Investors Warranty of America, LLC, No. 20-cv-1502 PJM

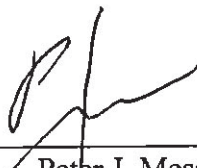
Dear counsel:

The Court has reviewed Defendant Investors Warranty of America, LLC's Brief, Pursuant to the Court's March 15, 2023 Order, in Support of Reconsideration of the Applicability of the Crime-Fraud Exception (ECF No. 294); Plaintiff's opposition thereto (ECF No. 310); and Defendant IWA's Reply (ECF No. 312).

The Court has chosen to hold an ex parte hearing at which IWA will have the opportunity to address the documents that the Court has deemed potentially relevant. The hearing will last for approximately one (1) hour. Chambers will reach out to IWA to set a date for the hearing.

Despite the informal nature of this ruling, it shall constitute an Order of the Court and the Clerk is directed to docket it accordingly.

Sincerely,



Peter J. Messitte
United States District Judge

CC: Counsel of Record
Court File

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ROCK SPRING PLAZA II, INC.,

Plaintiff,

v.

INVESTORS WARRANTY OF
AMERICA, LLC, *et al.*,

Defendants.

Civil No. PJM-20-1502

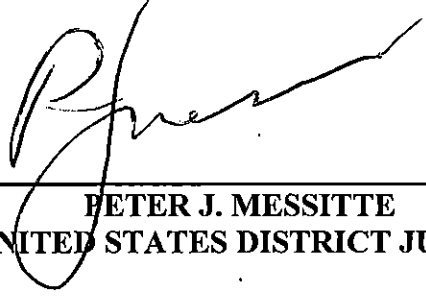
ORDER

Having considered “Defendant Investors Warranty Of America, LLC’s Brief, Pursuant to the Court’s March 15, 2023 Order, in Support of Reconsideration of the Applicability of the Crime-Fraud Exception” (ECF No. 294), Plaintiff’s response thereto (ECF No. 310), and IWA’s Reply (ECF No. 312); an *ex parte* hearing having been conducted with counsel for IWA on June 20, 2023; it is, this 17 day of August 2023, for the reasons stated in the accompanying Memorandum Opinion:

ORDERED

1. Within ten (10) days of this Order, IWA and its counsel **SHALL** produce to Plaintiff the three documents docketed in this case as ECF No. 288-1. Should IWA and counsel refuse to comply, the Court **WILL** entertain a Motion from Plaintiff to hold IWA and/or its counsel in contempt, and a substantial fine and possible incarceration of IWA’s principals or its counsel will be in the mix.
2. Pursuant to Paragraph 1, the following Motions are **DENIED**:

- a. The unresolved portion of IWA's Motion for Protective Order (ECF No. 226), which addresses the production of IWA's privileged communications; and
 - b. IWA's "Brief, Pursuant to the Court's March 15, 2023 Order, in Support of Reconsideration of the Applicability of the Crime-Fraud Exception" (ECF No. 294).
3. The unresolved portions of the following Motions on which the Court deferred ruling during the February 16, 2023 discovery hearing are hereby **DENIED WITHOUT PREJUDICE**:
 - a. RSD's Motion to Quash Non-Party Deposition Subpoena on Counsel for Rock Springs Drive, or, In the Alternative, For a Protective Order (ECF No. 255); and
 - b. Plaintiff's Motion to Compel Supplemental RSD Privilege Log (ECF No. 277).
4. The accompanying Memorandum Opinion **SHALL** remain **SEALED** and be made available only to Defendants and their counsel pending further order of the Court.



PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE

6500 CHERRYWOOD LANE
GREENBELT, MARYLAND 20770
301-344-0632

MEMORANDUM

To: Counsel of Record

From: Judge Peter J. Messitte

Re: Rock Spring Plaza II, LLC v. Investors Warranty of Am., LLC
Civil No. 20-1502 PJM

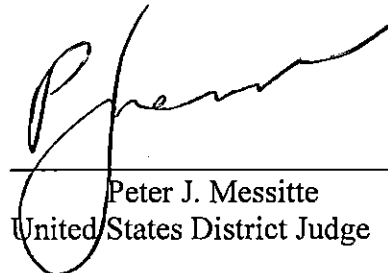
Date: August 17, 2023

The Court has today filed under seal (available at this point only to Defendants and their counsel) a Memorandum Opinion finding that Plaintiff has satisfied the “fraud” prong of the crime-fraud exception to the attorney-client privilege with respect to three documents originally identified in IWA’s privilege log and which the Court has reviewed *in camera*.

Accordingly, the Court has **ORDERED** IWA and its counsel to produce those three documents to Plaintiff within ten (10) days.

Should Plaintiff advise the Court that IWA or its counsel have failed to do so, the Court will entertain from Plaintiff a Motion to hold IWA and/or its counsel in contempt, subject to possible sanctions, including a substantial fine or incarceration.

Despite the informal nature of this ruling, it shall constitute an Order of the Court and the Clerk is directed to docket it accordingly.



Peter J. Messitte
United States District Judge

CC: Court File

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Rock Spring Plaza II, LLC,

Plaintiff,

v.

Investors Warranty of America, LLC,
et al.,

Defendants.

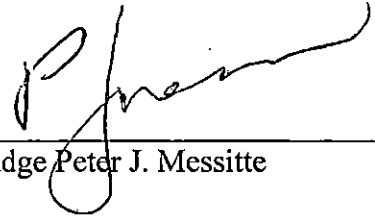
Civil Action No. 8:20-cv-01502-PJM

ORDER

Upon consideration of Defendant Investors Warranty of America, LLC's ("IWA")
Emergency Motion for Extension of Time to Respond to Court's August 17, 2023 Order [ECF
340], it is this 23 day of AUG, 2023, by the District Court for the District of Maryland
hereby,

ORDERED, that the Motion is Granted; and it is further

ORDERED, that IWA's deadline to respond to the August 17, 2023 Order is extended to
up and through September 7, 2023.



Judge Peter J. Messitte

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE

6500 CHERRYWOOD LANE
GREENBELT, MARYLAND 20770
301-344-0632

MEMORANDUM

TO: Counsel of Record

FROM: Judge Peter J. Messitte

RE: Rock Spring Plaza II, LLC v. Investors Warranty of Am., LLC, et al.
No. 20-cv-1502

DATE: February ²¹____, 2024

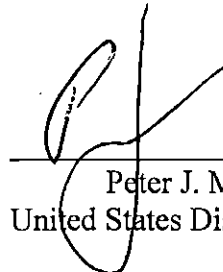
* * *

The Court has learned that the U.S. Court of Appeals for the Fourth Circuit recently granted in part and denied in part Investors Warranty of America, LLC (“IWA”)’s petition for mandamus. The Fourth Circuit order grants the petition insofar as this Court is directed to “vacate its Production Order” but denies IWA’s “request for an order directing the district court to maintain certain information under seal and to reassign the case upon remand.” Doc. No. 34, *In re: Investors Warranty of America, LLC*, No. 23-1928 (4th Cir. Feb. 21, 2024).

Aside from vacating the Production Order, the Fourth Circuit’s order is ambiguous as to precisely what next steps this Court should take.

Accordingly, the Court **SCHEDULES** a telephone conference with counsel for the parties to discuss the Fourth Circuit’s decision tomorrow, February 22, 2024, at 2:30 p.m.

Despite the informal nature of this ruling, it shall constitute an Order of the Court and the Clerk is directed to docket it accordingly.



Peter J. Messitte
United States District Judge

CC: Court file
Counsel of Record

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

ROCK SPRING PLAZA II, LLC,

Plaintiff,

v.

INVESTORS WARRANTY OF AMERICA,
LLC, et al.,

Defendants.

Case No. 8:20-cv-01502-PJM

Greenbelt, Maryland

February 22, 2024

2:36 p.m.

TELECONFERENCE
BEFORE THE HONORABLE PETER J. MESSITTE

A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFF:

PILLSBURY WINTHROP SHAW PITTMAN

1200 17th Street, N.W.

Washington, D.C. 20036

BY: WILLIAM M. BOSCH, ESQUIRE

(202) 663-8761

william.bosch@pillsburylaw.com

BY: NICOLE STEINBERG, ESQUIRE

(202) 663-8151

nicole.steinberg@pillsburylaw.com

(Continued)

PATRICIA KLEPP, RMR
Official Court Reporter
6500 Cherrywood Lane, Suite 200
Greenbelt, Maryland 20770
(301) 344-3228

A P P E A R A N C E S (Cont'd)ON BEHALF OF DEFENDANT INVESTORS WARRANTY OF AMERICA, LLC:

ARNALL GOLDEN GREGORY
171 17th Street, N.W., Suite 2100
Atlanta, Georgia 30363
(404) 873-8500
BY: REBECCA ALLISON DAVIS, ESQUIRE
(404) 873-8500
rebecca.davis@agg.com

ON BEHALF OF DEFENDANT ROCK SPRINGS DRIVE, LLC:

KROPF MOSELEY PLLC
1100 H Street, N.W., Suite 1220
Washington, D.C. 20005
BY: SARA KROPF, ESQUIRE
(202) 627-6900
sara@kmlawfirm.com, ESQUIRE

P R O C E E D I N G S

(Call to order of the Court.)

THE COURT: Judge Messitte here.

Mr. Bosch, are you on the line?

MR. BOSCH: Good afternoon, Your Honor, yes. I'm joined by my colleague, Nicole Steinberg.

THE COURT: Very good. And Investors Warranty, Ms. Davis?

MS. DAVIS: Yes, Your Honor. Good afternoon.

THE COURT: Anyone else with you?

MS. DAVIS: No, Your Honor.

THE COURT: Rock Springs Drive, Ms. Kropf?

MS. KROPF: Yes, I'm here, Your Honor.

THE COURT: Okay. Let me tell you, when I have a case that goes up to -- on appeal -- I don't know what goes on, on appeal. I don't get served with motions, or briefs, or anything. So my first learning of what has happened in this case came with this somewhat puzzling order from the Fourth Circuit. I have no idea -- well, I didn't see, I think, a brief that Mr. Bosch filed at one point, which was the first time I had any glimmer of what the arguments were on appeal, other than, obviously, the law firms objected.

So my real question is, where are we now in this case? I'm not sure I understood exactly or understand exactly what the Fourth Circuit had said. That is -- and let me just give you my

1 first reaction, which is, vacate the production order, but what,
2 allow me to unseal information and, I guess, despite defense
3 counsel's concerns, well, permit me to remain on the case.

4 Mr. Bosch, let me hear from you as to what you
5 think -- where you think we are and what is going to happen
6 next, in all probability.

7 MR. BOSCH: Well, I -- Judge, I cannot explain the
8 reasoning, nor do I understand the entirety of the ruling, but
9 our view is that we should proceed. Your Honor has already said
10 that discovery is closed, other than any discovery that might
11 arise out of the Fourth Circuit's ruling, and so as I interpret
12 Fourth Circuit's ruling, there is no further discovery to be
13 had, although I'll just note as an aside that before the
14 petition was filed, Transamerica was ordered to produce
15 discovery, was prepared to do so, but then held it in abeyance
16 while this case was up on appeal.

17 So the only discovery issue remaining, as I understand
18 it, is Transamerica's production of documents as ordered already
19 by the magistrate judge and anything that arises out of that.
20 Otherwise, plaintiff's view is, we go to where we were, as the
21 Court initially contemplated, when we complete discovery, which
22 is a briefing schedule for summary judgment, and as the Court's
23 last scheduling order laid out, it would be -- this time, it
24 would be the defendants who would take the initial burden of
25 filing their papers, and then we would respond.

1 So that's where I see this going now.

2 THE COURT: Okay. Before you leave that, what do you
3 understand -- the denial of petitioner's request that the Court
4 maintain certain information under seal -- I don't even know
5 what they requested, because as I say, I don't see the motions.

6 MR. BOSCH: No. Frankly, I'm surprised with that,
7 because my understanding is that for a writ of mandamus
8 petition, those papers are supposed to go to the District Court
9 judge, but be that as it may, as I interpret it, what was under
10 seal I think were four things. The first was the memorandum
11 opinion itself, from which they were appealing, and we have that
12 already, so that --

13 THE COURT: And you've seen that, right? You have
14 seen that.

15 MR. BOSCH: I have seen that, yes. The Fourth Circuit
16 ordered that to be produced, and now, as I understand it, that
17 is not to be under seal.

18 THE COURT: The order is not to be under seal; is that
19 what you're saying?

20 MR. BOSCH: Correct, and your memorandum opinion
21 encompassing that order, where you explain your reasoning for
22 why these three documents should be disclosed. That is not
23 under seal.

24 THE COURT: Doesn't the document -- I haven't looked
25 at it recently, but doesn't the memorandum opinion actually

1 refer to the three documents that talk about these contexts?

2 MR. BOSCH: Yes, it does.

3 THE COURT: And you say that's now in the public
4 record, or shouldn't be, or what? That's why I'm a little
5 puzzled about it.

6 MR. BOSCH: Yes. Well, so as I interpret the
7 Fourth Circuit's decision, it's that the petition seeking to
8 have that document -- and there are others as well -- maintained
9 under seal has been denied so that that is now a public document
10 that can be used going forward in the litigation.

11 That would also include -- at least to my
12 understanding, I recall that there was an eight-page
13 single-spaced brief or letter brief submitted to the Court
14 ex parte by IWA, that they wished to maintain under seal, that
15 that would also no longer be under seal, nor would the Court's
16 response to that on March 13th, nor would be the transcript of
17 the ex parte hearing, in which the Court considered this crime
18 fraud issue.

19 Those would no longer be under seal, and we, the
20 plaintiff, would have access to them, which would make sense,
21 because if this issue ultimately goes up on appeal from the
22 final judgment, the issues arising out of this crime fraud issue
23 presumably then would need to be presented to the Fourth
24 Circuit, and that would include these ex parte submissions that
25 were submitted under seal.

1 THE COURT: Okay, so you say. But I'll come back.

2 Let me hear first from Ms. Davis.

3 MS. DAVIS: Your Honor, first of all, I just want to
4 make sure that you know that we did send you copies of
5 everything that we sent to the Fourth Circuit. I can send you,
6 you know, evidence of that; it was all sent via FedEx. If
7 there's something you're missing, we are happy to resubmit it.

8 THE COURT: My Law Clerk who is working on it says
9 he's never seen anything -- we have the record and the reply in
10 the record but not -- I don't have the briefs.

11 MS. DAVIS: Right.

12 THE COURT: Well, I don't know what you petitioned.
13 Right now, I'm in the dark. I'm certain -- your motions -- I'd
14 like to see your brief, frankly, but certainly, your motion --
15 as I say, I don't know really what was argued before the Court,
16 but the -- what comes down to me is something of a puzzle, as I
17 mentioned.

18 Mr. Bosch says, let's at least -- why are they
19 deciding that they're redundant, but number one, resend me --
20 send me your briefs and send me your motion so I can see what it
21 was that was before the Court.

22 MS. DAVIS: Yeah, I absolutely will do so, and I'll
23 send you also records from -- that we did send it, and I'll dig
24 into that more; I don't understand why you do not have a copy of
25 that.

1 But as far as the actual petition itself, it should be
2 very clear once you do see it that what we said was, we wanted
3 to keep under seal the order that addressed the privileged
4 information, and that's what we discussed, and that's what we --
5 the only thing we ever relied on in the motion itself.

6 THE COURT: Let me just be clear; the order and the
7 memorandum opinion or just the order?

8 MS. DAVIS: It was just the memorandum. We filed the
9 memorandum order under seal, your opinion under seal.

10 THE COURT: Right.

11 MS. DAVIS: And we asked that it be kept under seal.
12 The Court -- the Fourth Circuit had us produce it to Mr. Bosch,
13 and that is what we were referring to in the petition. That is
14 the only thing that --

15 THE COURT: Are you saying, then, that it should not
16 be released publicly at this point, or the Court is authorized
17 to do it?

18 MS. DAVIS: At this point, there's no reason not to.
19 I think the Court has -- basically, the Fourth Circuit has said
20 to go ahead and release it, not to keep it under seal. I mean,
21 there's no point in not doing that at this point. I mean, it's
22 already had us give it to Mr. Bosch.

23 THE COURT: Okay, but --

24 MS. DAVIS: But as far as the other things, those were
25 not produced to the Court, the Fourth Circuit has not considered

1 the March 2023 order, it has not -- did not consider anything
2 with respect to the ex parte hearing.

3 But none of that was actually before the
4 Fourth Circuit; the Court never considered those at all.

5 THE COURT: Well, that aside, what would prevent the
6 Court from releasing those as well? If the opinion is out
7 there, all this led up to the opinion, and it's whoever can read
8 it. I don't -- well, I'm not asking for a decision at this
9 point; that's what I'm trying to understand. It's your view
10 that the Court -- that those documents should remain under seal,
11 under this report?

12 MS. DAVIS: I think they always should have been under
13 seal, quite frankly, Your Honor. I don't think the Fourth
14 Circuit thought through what it was asking us to produce to
15 Mr. Bosch. We had a redacted version, as you know. That is
16 what should have been produced to Mr. Bosch. However, the full
17 version of it was produced. It does discuss the privileged
18 documents.

19 The Fourth Circuit has come back and said that the
20 production order is vacated and those privileged documents are
21 not to be produced, and therefore, I don't see how having us
22 produce or share with Mr. Bosch additional information about
23 what the Court has said Mr. Bosch should not have makes much
24 sense.

25 So I will say, the Fourth Circuit has no idea what was

1 in those other documents that Mr. Bosch is talking about, the
2 two prior sealed communications between you and I and also the
3 hearing; the Fourth Circuit has no idea about those or what's in
4 them.

5 And so I have a hard time believing that the
6 Fourth Circuit, after saying that the production order should be
7 vacated, is saying that additional information that discusses
8 those same documents that should not be produced should now be
9 given to Mr. Bosch and unsealed.

10 THE COURT: Say that again; you see no reason why they
11 should not be given to him unsealed?

12 MS. DAVIS: They should not be, they absolutely should
13 not be given.

14 THE COURT: Okay.

15 MS. DAVIS: Should not be. Those -- the hearing
16 transcript discusses the very privileged documents that the
17 Fourth Circuit has said Mr. Bosch should not get.

18 So I don't understand why that would be unsealed and
19 provided to Mr. Bosch.

20 THE COURT: I say again -- well, are you saying the
21 Fourth Circuit has discussed these other documents?

22 MS. DAVIS: No, the Fourth Circuit -- when Your Honor
23 has the petition -- and again, I'm unclear as to why the Court
24 doesn't have the petition, but when the Court has the petition,
25 you will see that what we said was that the Court -- that the

1 Fourth Circuit should keep sealed your memorandum order. The
2 Fourth Circuit, however, allowed Mr. Bosch to receive a copy of
3 that order, and that's what it's referring to. The
4 Fourth Circuit is not referring to any transcript, and it is not
5 referring to your original order asking me to produce those
6 documents from March of 2022 -- I'm sorry, 20- -- yeah, 2022 --
7 or 2023; I'm sorry.

8 THE COURT: Okay, all right. All right, that's your
9 position.

10 Ms. Kropf, do you have a position different from
11 Ms. Davis?

12 MS. KROPF: I do not, Your Honor.

13 THE COURT: Okay. Well, here's where we are, I mean,
14 from what I've seen. I just wanted to hear what -- and I've
15 gotten I think a response that explains to me the problems
16 created by a summary order like this, where I'm not quite sure
17 what I am and am not supposed to do.

18 I would think, Mr. Bosch, since the documents that you
19 think should now be open are presently sealed, that it will
20 remain for you to brief -- file a motion to unseal those,
21 consistent with whatever we have in front of us, and Ms. Davis
22 can respond in whatever way she thinks appropriate. Obviously,
23 you're taking different views on this, with the -- you know, the
24 following observation, I mean, in terms of where we are.

25 One thing that's not clear to me, for example, since

1 the memorandum opinion has been unsealed and since there is
2 reference in the memorandum opinion to what was said in the
3 letters to or from counsel -- I don't remember how they ran --
4 is that information available in trial, or is the Court in
5 either side's view precluded from even referring to those
6 matters in it's trial proof?

7 I understand there's separate evidence that plaintiff
8 may adduce as to a badge of fraud or whatever, but as to those
9 specific documents that sort of got us -- to which we ended up
10 going through the gate, are they in play anymore, Mr. Bosch? Do
11 you think they are? I don't know.

12 MR. BOSCH: Judge I'm in the same position you're in,
13 which is trying to discern where the lines get drawn, but as I
14 interpreted the Fourth Circuit's ruling, where it said that the
15 request for an order directing the District Court to maintain
16 certain information under seal and to reassign the case, since
17 that was rejected, what it means is that the information is now
18 available for use at trial. It's -- if it intended for that to
19 be clawed back, it could have said so, and it did not.

20 So that's my --

21 THE COURT: What did it say, then, what does it say,
22 that who doesn't produce what? I mean, the -- no production is
23 required, but what -- what's the difference? I mean, if you
24 have the information in hand and the actual photocopy of the
25 document isn't delivered, is there any difference at all in

1 terms of the outcome?

2 MR. BOSCH: There is, Judge. If -- for example, if
3 the Judge -- if the Fourth Circuit had not granted the petition,
4 it would leave open not just the production of the three
5 documents in question but would also expose -- as the Court
6 itself acknowledged, would expose IWA and RSD to further
7 discovery into these communications that they withheld as
8 privileged.

9 And so one could interpret the order as saying, we
10 don't want to vitiate the privilege as broadly, but as to this
11 specific information that's already been disclosed, you can use
12 it at trial. That's where they drew the line. One could in- --
13 I don't know, and so I'm left to speculate, but that's one way
14 to interpret the order, recognizing we're not on an
15 interlocutory appeal; we're dealing with a writ of -- a
16 mandamus, with the Court sitting, in essence, in equity.

17 THE COURT: Ms. Davis?

18 MS. DAVIS: Your Honor, I don't know how you could
19 possibly interpret the Court's order to say that these
20 documents, which contain privileged information and are not
21 available to Mr. Bosch, that the Court order, your order could
22 be used to basically present some evidence of fraud against IWA,
23 as to IWA. The Fourth Circuit has said that the production
24 order is vacated. That's -- the memorandum that supports the
25 Fourth Circuit decision is also vacated.

1 All the Fourth Circuit has said is, you know what,
2 it's out there now, that order is out there now because we said
3 Mr. Bosch can have it, but we are vacating the order. That
4 memorandum is in support of that order; it is not -- that
5 memorandum did not just exist on its own; it was in support of
6 that order.

7 So how can you say that the memorandum can be used and
8 anything in that memorandum can be used, when the order itself
9 is vacated?

10 THE COURT: Okay. Well, again, this is the kind of
11 thing that I think needs to be the subject of a motion. And
12 maybe -- again, I think the laboring oar, Mr. Bosch, is with
13 you, with regard to, number one, I guess the meaning of the --
14 where the use of the memorandum order, memorandum opinion, or
15 any information therein is usable at trial, one, and then, the
16 extent to which it would all -- other documents currently under
17 seal which do relate to the Court's ultimate opinion are also
18 subject to unsealing. I think that needs to be done by motion,
19 and I think, then, IWA needs a chance to respond.

20 And then I need to make a ruling. Either I do -- it's
21 just one of those things that we don't always understand where
22 the Appeal Court is coming from, but you're doing your best to
23 try and, you know, call 'em as you see 'em. And right now,
24 again, we called this immediate phone conference because it's
25 murky, it's murky as to where we are.

1 And that said -- I will come back in terms of the
2 timetable on this, but that said, I think some thinking needs to
3 be given to the possibility that the Court will agree that
4 the -- all the information is unsealable -- and may be
5 unsealable and not usable; I don't know. I mean, that's another
6 sort of a subdivision here; it's unsealable, but you can't use
7 that either.

8 But if in fact that is the decision of the Court, me,
9 there may be another appeal, I guess; I don't know whether it
10 comes in the form of a mandamus, or interlocutory, or what. I
11 mean, it looks like it could extend this case out for a long
12 time, and whether that's a decision that either side wants to
13 facilitate, it's up to you, I guess.

14 I mean, this case has been bumping along for a long
15 time; it can continue to bump along. But you know, let's just
16 see where we are on this. I mean, eventually, we want to get
17 the case tried --

18 MR. BOSCH: Yes, Judge.

19 THE COURT: -- I guess in a reasonable time.

20 So I would -- again, Ms. Kropf, I'm leaving you out of
21 the conversation, because I expect you don't have a particular
22 position, here, or you do?

23 MS. KROPF: No, I think I agree with Ms. Davis. I'm
24 struggling to understand, if the Fourth Circuit said that
25 they're vacating your production order, that's the order that

1 found that the crime fraud exception applies, how anything
2 could -- how it's possible that Plaintiff could use information
3 that would only be available to them through applying the crime
4 fraud exception, how they could possibly use that at trial
5 without just creating reversible error on its own.

6 I mean, I think that's where -- but I'll assume --
7 you know, we'll wait for Mr. Bosch's argument, but I think
8 that's -- I understand; I do get this feeling, I understand the
9 confusion. I think once we see the petition, it will be
10 clearer, but if the order has been vacated, which is what
11 brought crime fraud into play at all, I'm not sure how it would
12 be possible for the -- information that is only available
13 through crime fraud could possibly be used, but --

14 THE COURT: Okay, all right.

15 MS. KROPF: Maybe Mr. Bosch will convince me
16 otherwise.

17 THE COURT: That would certainly be part of a
18 response.

19 Well, Mr. Bosch, then, before we get into briefing on
20 summary judgment -- well, let me do this. It's conceivable
21 that, based on the current sealing of this information and
22 without specific reference to what was in the memorandum
23 opinion, that evidence, that a motion for summary judgment could
24 be filed -- could be filed, I suppose.

25 But I guess, the -- usually, it's unlikely that a

1 plaintiff prevails on summary judgment, but -- a motion filed by
2 the defendant I assume would anticipate, that will say, well, we
3 don't -- you know, we think there's -- either there's enough
4 evidence right now to defeat summary judgment, or they want to
5 wait and see what the Court rules with regard to the evidence
6 that is in the memorandum opinion. Anyway, I guess that's just
7 me sort of thinking out loud.

8 I think the next thing to do is to just focus right
9 now on the motion that I anticipate you would file, Mr. Bosch,
10 and the response, and the reply, and then we will have to write
11 up -- make a decision.

12 MR. BOSCH: Your Honor, I agree, and I take the
13 Court's guidance on this, at least to the specific issue in
14 which Court said, you'll just have to call balls and strikes and
15 figure out how it could all -- to use that memorandum opinion
16 and anything else, right, so we'll brief that up.

17 But I do want to clarify one thing. It is Plaintiff's
18 position that in the light of the Fourth Circuit's decision,
19 discovery's closed, so what we would ask is for there to be an
20 order now directing Transamerica to produce the documents that
21 we've been waiting on since this appeal was filed. There's
22 nothing further to prevent that.

23 What I would also suggest is that the parties meet and
24 confer to propose a briefing schedule on summary judgment,
25 because that's where we were when discovery closed, there will

1 be no further discovery, as I understand it, and again, it is
2 not the plaintiff here that would be moving for summary
3 judgment.

4 And as the Court contemplated and as -- I think as the
5 defendants have already said, they plan to move for summary
6 judgment on the contract and presumably as well the fraud-based
7 theory. So it would be a briefing order -- a briefing schedule
8 where the defendants move for summary judgment in the first
9 instance, and then we respond to that.

10 THE COURT: Right.

11 Okay, Ms. Davis?

12 MS. KROPF: Your Honor, this is Ms. Kropf. You know,
13 we -- if Mr. Bosch wants to go ahead and tell us that he does
14 not plan to file for summary judgment, that might work. We
15 understood from Mr. Bosch that he does plan to move for summary
16 judgment or at least wants to keep the option open, so we would
17 propose, obviously, that we do it at the same time --

18 THE COURT: Okay.

19 MS. KROPF: -- so that there isn't -- you know, if not
20 inefficiencies built in, and they aren't -- building in their
21 last word at the end, that -- if we're both going to move, then
22 we move at the same time, if they think they have summary
23 judgment --

24 THE COURT: Yeah, I guess it's theoretically possible,
25 Ms. Kropf. I would say any kind of plaintiff's motion for

1 summary judgment ordinarily is very low prospect. I mean, it's
2 possible, I guess, and I think, Mr. Bosch, you understand that;
3 it probably is behind what you just said.

4 You should talk about that, and if you're really not
5 seriously considering either your own motion for summary
6 judgment, Mr. Bosch, that may facilitate things to consider.

7 MR. BOSCH: Right. I mean, Your Honor, of course,
8 I'll be mindful of the local rules, where the Court sets the
9 briefing schedule, even if both parties seek to move. It
10 directs one party to move first, and that's where we were under
11 the prior scheduling order.

12 Since we took the initial laboring oar on the last
13 summary judgment briefing, I think the Court contemplated that
14 this time, the defendants would do it on their -- as you would
15 expect.

16 THE COURT: You know, I certainly invite you to
17 refresh my recollection on that in the papers. I mean, there's
18 been some water under the bridge. That's another case since
19 yours. So I don't have all the details in my head, but remind
20 me what we've done when you file your papers, when you get to
21 that.

22 How much time do you need to file the motion, the
23 first motion that we talked about, Mr. Bosch?

24 MR. BOSCH: I'll ask for two weeks.

25 THE COURT: Oh, that's fine. Two weeks, then, to

1 respond, by IWA? Do you want more time? It's up to both sides.
2 Again, I'm in no hurry if you're in no hurry; this case has
3 been -- it's been a really a long time; two weeks may be a
4 faster schedule than we need to be on. Up to you, though; if
5 you can do it in two weeks, that's fine.

6 MS. DAVIS: Respectfully, Your Honor, I just --

7 THE COURT: I've got --

8 MS. DAVIS: I'm sorry.

9 THE COURT: Go ahead.

10 MS. DAVIS: This is Rebecca Davis. I haven't seen
11 Mr. Bosch's filings, so I'm not sure how long I would need to
12 respond to that.

13 THE COURT: Mr. Bosch, do you think you could get a
14 filing out in two weeks?

15 MR. BOSCH: I'll tell you what; I'm a little concerned
16 by the pace, here. I'll get a filing out in ten days if they
17 can respond within ten days.

18 MS. DAVIS: I can't agree to respond in ten days if I
19 have not seen what Mr. Bosch is filing, because it's not
20 something that was expected, and on top of that, Your Honor, I
21 do think, as I noted, we FedExed the petition and the documents,
22 and in fact, we filed a reply on the record itself.

23 So I'm going to send the petition again, with evidence
24 that we did send it the first time, and I think Your Honor needs
25 to see what the petition says. I think that a lot of this is

1 going to become much more clear.

2 THE COURT: Well, I agree. I mean, I think that bears
3 on the Court's decision. What about -- well, let's leave it
4 this way. If you can file something in ten days, Mr. Bosch,
5 file, and I'll give defendant 20 days to respond, extendable for
6 good cause shown, because you'll have an opportunity to reply,
7 Mr. Bosch, so -- maybe -- if they can do it in 20, you can reply
8 in 10 more, or if they need a few more beyond the 20, you will
9 still get your time of, say, ten days to reply. So we'll put
10 that out.

11 And what about Transamerica's documents? Who is ...

12 MR. BOSCH: Your Honor, this is Bill Bosch.
13 Transamerica was invited to the call. I asked Ms. Davis whether
14 they would participate, and she had a conversation with them.
15 They're not on the call.

16 THE COURT: Is there -- I have no problem, then, if
17 you will --

18 MS. DAVIS: Your Honor, if I could just interject.
19 I'll tell you what Mr. Meagher said at DLA Piper. I did not
20 have a conversation with Mr. Meagher; he sent me an e-mail
21 earlier today, saying that he was copied on the notice regarding
22 the teleconference with the Court for this afternoon, including
23 the invitation for it. He read it as applicable to the parties
24 only, however, and believed that he was only copied on the
25 notice and invitation because there are recent appearances

1 relating to numerous motions regarding third-party subpoenas,
2 and so that is why he did not attend. He is -- Transamerica is
3 no longer a party, so he felt that the notice was sent to him in
4 error.

5 THE COURT: Well, they're not a party, but they were
6 presumed -- again, I don't have all this in my head. There was
7 a separate -- was it a separate subpoena for documents,
8 Mr. Bosch?

9 MR. BOSCH: Yes, and it was subject to a motion to
10 compel, which was resolved by the magistrate judge, who directed
11 them to produce certain documents. They had pulled the
12 production set and didn't send it when the Fourth Circuit
13 petition was filed.

14 THE COURT: Okay. Would you then make that the
15 subject of a separate motion and order that the production be
16 made within a certain number of days, pursuant to the history
17 just provided?

18 MR. BOSCH: Yes, will do.

19 THE COURT: And that way -- directly to the
20 evidence -- to the notice of Transamerica.

21 MR. BOSCH: Yes. And with the Court's leave, I'm also
22 going to suggest that we file a motion to set a scheduling
23 order, because I'm concerned about the scheduling.

24 The Court has noted several times how this case seems
25 to go on endlessly. Plaintiff does want to get this matter

1 resolved, and -- notwithstanding -- however the Court resolves
2 the issue of -- I'll just use the Court's term -- the murky
3 nature of the Fourth Circuit's decision, we still need to move
4 we forward with summary judgment.

5 Even if we got a summary judgment schedule set, it's
6 not likely to happen, and it wouldn't be ready for the Court
7 until sometime summer or fall. The record has been well
8 established for well over a year now, so I think we could
9 probably move forward and hopefully collaboratively with the
10 defendants propose a joint schedule but if not, I would propose
11 that when we submit our motion within ten days, we will submit a
12 proposed scheduling order as well.

13 THE COURT: All right. Well, you could do that; I
14 have no problem with your doing that. I do want no further
15 discovery, and then I think that really was fairly emphatic in
16 the -- where we were, except for your request regarding
17 Transamerica.

18 If that's been ordered -- and again, I don't have that
19 in my head at the moment, but if it's been ordered, then it
20 should be complied with. And you just, you know, make that the
21 subject of a separate motion and order, and we'll go forward
22 with that. And then on the scheduling order, a separate motion
23 order, fine, and on the availability of the memorandum opinion
24 and such, whatever your position is relative to that, and
25 defendant's response.

1 Anything else?

2 MR. BOSCH: Nothing from Plaintiff. Thank you,
3 Your Honor.

4 THE COURT: Okay. All right, very good. Well, thank
5 you very much, Counsel.

6 And Ms. Davis, if you would, send me again these
7 documents; I have not seen them. And I don't want to say we
8 don't have them, but we're usually pretty good about opening our
9 mail, here, so -- printed out and misplaced. But it would be
10 helpful for me to see the briefs, and the petition, and the
11 motion.

12 MS. DAVIS: Yeah, absolutely; I will resend
13 everything.

14 THE COURT: All right, thanks a lot. Bye-bye.

15 MS. DAVIS: Thank you.

16 (The proceedings were concluded at 3:07 p.m.)
17
18
19
20
21
22
23
24
25

1 CERTIFICATE OF OFFICIAL REPORTER

2 I, Patricia Klepp, Registered Merit Reporter, in and for
3 the United States District Court for the District of Maryland,
4 do hereby certify, pursuant to 28 U.S.C. § 753, that the
5 foregoing is a true and correct transcript of the
6 stenographically-reported proceedings held in the above-entitled
7 matter and the transcript page format is in conformance with the
8 regulations of the Judicial Conference of the United States.

9 Dated this 29th day of February, 2024.

10
11 _____/s/

12 PATRICIA KLEPP, RMR
13 Official Court Reporter
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE

6500 CHERRYWOOD LANE
GREENBELT, MARYLAND 20770
301-344-0632

MEMORANDUM

TO: Counsel of Record

FROM: Judge Peter J. Messitte

RE: Rock Spring Plaza II, LLC v. Investors Warranty of Am., LLC, et al.
No. 20-cv-1502

DATE: February 22, 2024

* * *

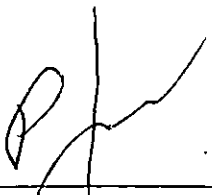
Today the Court held a telephone conference with counsel for Rock Spring Plaza II, LLC ("Plaza"), Investors Warranty of America, LLC ("IWA"), and Rock Springs Drive, LLC ("RSD") to discuss the consequences of the Fourth Circuit's recent decision on IWA's petition for a writ of mandamus.

During the telephone conference, the need to brief three issues arose:

1. As to what "certain information," if any, the Court may or may not unseal as a result of the Fourth Circuit's decision, and whether Plaza may use as evidence any such information or information contained in the Court's Memorandum Opinion and Order addressing the crime-fraud issue:
 - a. Plaza **SHALL** file its Motion within ten (10) days of this Order;
 - b. Defendants **SHALL** have twenty (20) days thereafter to file responses in opposition, subject to further extension of time for good cause; and
 - c. Plaza **SHALL** have ten (10) days thereafter to file a reply.
2. As to the production of documents by nonparty Transamerica entities pursuant to Magistrate Judge Simms' November 14, 2023 Order (ECF No. 382):
 - a. Plaza **SHALL** file its Motion to Compel within ten (10) days of this Order;
 - b. Transamerica entities **SHALL** have ten (10) days thereafter to file a response in opposition, if any; and
 - c. Plaza **SHALL** have ten (10) days thereafter to file a reply.
3. The parties **SHALL** jointly, if possible, propose a scheduling order for the filing of any dispositive motions and a proposed trial date within the next thirty (30) days. If the parties

disagree about the schedule, the parties **SHALL** file competing proposals and the Court shall decide as between them.

Despite the informal nature of this ruling, it shall constitute an Order of the Court and the Clerk is directed to docket it accordingly.



Peter J. Messitte
United States District Judge

CC: Court file
Counsel of Record

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ROCK SPRING PLAZA II, LLC

Plaintiff,

v.

INVESTORS WARRANTY OF AMERICA,
LLC, et al.,

Defendants.

Civil Action No. 8:20-cv-01502-PJM

PLAINTIFF'S MOTION TO UNSEAL CRIME-FRAUD INFORMATION

Plaintiff Rock Spring Plaza II, LLC (“Plaza”), by counsel and pursuant to this Court’s instruction in its February 22, 2024, Memorandum (ECF No. 389¹), moves to unseal “all information supplied to or generated by the district court relating to [Defendant Investors Warranty of America, LLC’s] privileged documents,” as directed by the Fourth Circuit’s February 21, 2024, Order (Dkt. No. 34²).

I. INTRODUCTION

On August 17, 2023, this Court issued a sealed memorandum opinion (ECF No. 339) (the “Memorandum Opinion”) along with a public order (ECF No. 340) (the “Production Order”) and a public memorandum (ECF No. 341) directing Defendant Investors Warranty of America, LLC (“IWA”) to produce to Plaza three documents on its privilege log that satisfy “the ‘fraud’ prong of the crime-fraud exception to the attorney-client privilege” (ECF No. 341).

¹ Citations in the form “ECF No. ____” are citations to this Court’s docket.

² Citations in the form “Dkt. No. ____” are citations to the Fourth Circuit’s docket for In re: Investors Warranty of America, LLC (23-1928), attached hereto as **Exhibit A**.

In response, on September 6, 2023, IWA filed a Petition for Writ of Mandamus with the Fourth Circuit Court of Appeals (Dkt. No. 3) (the “Petition”), *ex parte* and under seal, requesting the following relief:

[A] writ of mandamus (i) directing the district court to vacate its Production Order, and maintain under seal all information supplied to or generated by the district court relating to IWA’s privileged documents, and (ii) to reassign the case upon remand.

Pet. at 4-5. IWA did not file a redacted version of its Petition and refused to serve Plaza with its Petition or the Court’s sealed Memorandum Opinion.

On November 21, 2023, the Fourth Circuit issued an order directing Plaza to file an answer to IWA’s Petition. Dkt. No. 15. In response, Plaza filed a motion seeking access to the Petition and underlying documents (Mot. to Extend, Dkt. No. 19 (Nov. 30, 2023)). On December 7, 2023, the Fourth Circuit granted Plaza’s motion and ordered IWA to serve Plaza with the Petition and the Memorandum Opinion. Dkt. No. 23. The next day, IWA filed a motion for clarification stating that it would serve only a redacted version of the Memorandum Opinion (Dkt. No. 24 (Dec. 8, 2023)), which it did on December 12, 2023. On December 18, 2023, the Fourth Circuit denied IWA’s motion for clarification (Order, Dkt. No. 25 (Dec. 18, 2023)) and, on that same day, IWA served Plaza with the unredacted version of the Memorandum Opinion.

Plaza submitted its opposition to IWA’s Petition on January 11, 2024 (Dkt. No. 27). IWA then submitted a motion for leave to file a reply brief with its reply brief attached (Dkt. No. 32 (Jan. 16, 2024)) and Plaza opposed the motion (Dkt. No. 33 (Jan. 17, 2024)).

On February 21, 2024, the Fourth Circuit issued an order (Dkt. No. 34) (the “Fourth Circuit Order”) granting in part and denying in part the Petition, stating:

The court directs the district court to vacate its Production Order and denies petitioner’s request for an order directing the district court to maintain certain information under seal and to reassign the case upon remand.

Fourth Circuit Order at 1.

On February 22, 2024, this Court held a telephone conference “to discuss the consequences” of the Fourth Circuit Order and directed Plaza to file a motion addressing “what ‘certain information,’ if any, the Court may or may not unseal as a result of the Fourth Circuit’s decision, and whether Plaza may use as evidence any such information or information contained in the Court’s Memorandum Opinion and Order addressing the crime-fraud issue.” Mem., ECF No. 389.

In accordance with the Fourth Circuit Order denying IWA’s request “for an order directing the district court to maintain certain information under seal,” the Court should unseal “all information supplied to or generated by the district court relating to IWA’s privileged documents” (Pet. at 4-5) and make such information available for use by Plaza.

II. ARGUMENT

A. The Fourth Circuit Denied IWA’s Petition Seeking to Maintain *All Information Under Seal*

In its Petition, IWA requested the Fourth Circuit to direct this Court to “maintain under seal *all information* supplied to or generated by the district court relating to IWA’s privileged documents.” Pet. at 4-5 (emphasis added). This information necessarily includes: (1) the Memorandum Opinion, which was under seal when IWA filed its Petition; (2) the “eight-page single-spaced letter” IWA filed *ex parte* on March 13, 2023 (Sealed Resp., ECF No. 289) (the “March 13th Letter”) in response to “the Court’s tentative view” that three documents on IWA’s privilege log reviewed *in camera* “might be relevant to Plaintiff’s fraud theory,” as referenced in the Court’s March 15, 2023, Memorandum (ECF No. 290); and (3) the transcript of the June 20, 2023, *ex parte* hearing (the “June 20th Hearing Transcript”) referenced in the Court’s Memorandum Opinion (Mem. Op. at 5) (collectively, the “District Court Materials”).

The Fourth Circuit expressly denied IWA’s request to keep the District Court Materials under seal. Fourth Circuit Order at 1. Facing an Order and Judgment from the Fourth Circuit, this Court has recognized that it must “‘implement both the letter and the spirit of the mandate,’ considering both the appellate court’s opinion and ‘the circumstances it embraces.’” *Interstate Fire & Cas. Co. v. Dimensions Assurance Ltd.*, No. GJH-13-3908, 2017 WL 3142764, at *2 (D. Md. July 21, 2017) (citing *S. Atl. Ltd. P’ship of Tennessee, LP v. Riese*, 356 F.3d 576, 584 (4th Cir. 2004)). Although the Fourth Circuit Order does not explain the reasons for the Circuit’s decision, the most appropriate approach now is to apply the plain meaning of the Fourth Circuit’s ruling. The “certain information” that IWA asked the Fourth Circuit to maintain under seal (and keep unavailable to Plaza) is what IWA said it is in its Petition: “all information supplied to or generated by the district court *relating* to IWA’s privileged documents.” Pet. at 4-5 (emphasis added). This information necessarily includes the District Court Materials.

1. The Memorandum Opinion Should No Longer Be Under Seal

Although IWA’s Counsel is skeptical as to whether “the Fourth Circuit thought through what it was asking [IWA] to produce” (Feb. 22, 2024 Tel. Conf. Tr., 9:13-15, ECF 390), there is no question that the Fourth Circuit rejected IWA’s efforts to keep the Memorandum Opinion under seal and unavailable to Plaza. Indeed, the Fourth Circuit ordered (Dkt. No. 23) IWA to produce an unredacted version of the Memorandum Opinion to Plaza after a full set of briefing on Plaza’s motion to extend (Dkt. No. 19-22). The Fourth Circuit then reaffirmed that decision (Order, Dkt. No. 25) after IWA served a redacted version and moved for clarification (Dkt. No. 24).

The Fourth Circuit had before it the Memorandum Opinion, which includes “references and excerpts of [IWA’s] privileged communications” (Pet’r Resp. at 2, Dkt. No. 20) and,

nevertheless, determined that Plaza was entitled to it. The Memorandum Order not only is what the Fourth Circuit ordered IWA to produce to Plaza, but also is among the District Court Materials that the Fourth Circuit expressly concluded should not remain under seal.

By contrast, the Production Order, which is the only ruling this Court made that was vacated by the Fourth Circuit, by its terms is limited. The Production Order is what required IWA to produce the three privileged documents this Court held were subject to the crime-fraud exception, and outlined the ramifications that might arise if IWA failed to timely produce those documents. Importantly, that Production Order did not encompass this Court's ruling (or its reasoning) pertaining to whether the crime-fraud exception applies; that ruling is in the Memorandum Opinion.

In granting IWA's request to vacate this Court's Production Order, the Fourth Circuit did not claw back the unredacted Memorandum Opinion or remand this case with instructions restricting its use. The Fourth Circuit also denied IWA's request to reassign the case, further suggesting that this Court's review of a set of IWA's privileged communications *in camera* and the findings encompassed in its Memorandum Order do not constitute prejudicial error that require reassignment. Instead, the Fourth Circuit *denied* IWA's request to keep under seal "all information" *related* to this Court's evaluation of the crime-fraud exception's application to IWA's privileged documents. A plain reading of the Fourth Circuit Order supports the conclusion that the Memorandum Opinion and its contents not only are available to Plaza, but also constitute the law of the case, which may be used in connection with deciding Plaza's claims.

2. The March 13th Letter Should No Longer Be Under Seal

The Fourth Circuit’s ruling also requires that the March 13th Letter be unsealed so that the legal arguments advanced by IWA may be properly considered when this Court’s final judgment ultimately is reviewed by the Fourth Circuit on appeal. As this Court no doubt recalls, IWA was invited to submit its *ex parte* view concerning the three documents the Court preliminarily determined may be subject to the crime-fraud exception. Instead of addressing those documents substantively, in its March 13th Letter to the Court, “IWA’s counsel devoted only a small section of their submission to the actual documents the Court determined might be relevant. The vast bulk of the submission was, and is, exclusively legal in nature.” Mem. Order at 1-2, ECF No. 290. Plaza is entitled to know what those legal arguments were.

3. The June 20th Hearing Transcript Should No Longer Be Under Seal

There also is no basis under the Fourth Circuit Order for the June 20th Hearing Transcript to remain under seal, as that transcript also is “information supplied to or generated by the district court *relating* to IWA’s privileged documents.” Pet. at 4-5. Here again, Plaza is entitled to understand the context for the Court’s Memorandum Opinion, including its discussion of the circumstances surrounding the legal advice on how to execute IWA’s exit strategy by assigning the ground lease to a newly formed entity and then waiting for the statute of limitations to run before defaulting. The scheme the Court outlined in its Memorandum Opinion is precisely the fraudulent scheme that Plaza has been alleging IWA implemented since this case commenced more than three years ago. The Fourth Circuit, again, rejected IWA’s Petition to keep under seal the information supplied to or generated by this Court relating to IWA’s privileged documents, which encompasses the June 20th Hearing Transcript. If the Fourth Circuit intended this information to not be available to Plaza for use at trial, it would have said so. Instead, its ruling

expressly *rejected* IWA's efforts to keep these materials under seal, which is what this Court should honor in accordance with the Fourth Circuit Order.

B. All Unsealed Information Should Be Available for Plaza's Use on Summary Judgment and at Trial

It is premature for Plaza to contemplate how the "information supplied to or generated by the district court relating to IWA's privileged documents" (Pet. at 4-5) may be used. The only piece of the sealed District Court Materials that Plaza has seen thus far is the Memorandum Opinion, which the Fourth Circuit expressly ordered IWA to disclose. When addressing summary judgment, the Court could use the Memorandum Opinion to identify "material facts that may not be genuinely in dispute." Fed. R. Civ. P. 56(f)(3). Regarding the March 13th Letter and the June 20th Hearing Transcript, Plaza has not seen the documents and therefore cannot yet address how those materials may be used.

The Court should recall how many times IWA's counsel already has misrepresented that the assignment of the ground lease was done in the ordinary course and in good faith, without any contemplation of defaulting once the statute of limitations on a fraudulent conveyance claim had run. *See e.g.* Def. Mot. to Dismiss at 17, June 29, 2020, ECF No. 13 ("Landlord's sole basis for asserting a fraudulent conveyance claim is speculation that Tenant is a 'sham entity' that IWA may in the future use as an instrumentality to evade financial obligations under the Ground Lease."); Def. Br. at 2, Mar. 27, 2023, ECF No. 294 ("[T]here has never been any fraudulent scheme by IWA, and moreover IWA has never hidden why it made the Assignment"); Def. Reply at 16, Ap. 25, 2023, ECF No. 312 ("The three-year statute of limitations had no bearing on the formation of RSD, nor has it had any relevance to RSD's ownership of the Property"). The evidence is now overwhelmingly to the contrary, and not just from the information reflected in

the Memorandum Opinion. At this juncture, however, Plaza asks only that the Court unseal the District Court Materials, as directed by the Fourth Circuit Order.

III. CONCLUSION

For the foregoing reasons, Plaza requests that the Court follow the Fourth Circuit Order and unseal “all information supplied to or generated by the district court relating to IWA’s privileged documents,” including the Memorandum Order, the March 13th Letter, and the June 20th Hearing Transcript.

Dated: March 4, 2024

Respectfully submitted,
/s/ William M. Bosch

William M. Bosch
Anthony Cavanaugh
Alvin Dunn
Katherine Danial
Nicole Steinberg
PILLSBURY WINTHROP SHAW
PITTMAN LLP
1200 Seventeenth Street NW
Washington, DC 20036
Telephone: 202-663-8000
Facsimile: 202-663-8007
william.bosch@pillsburylaw.com
anthony.cavanaugh@pillsburylaw.com
alvin.dunn@pillsburylaw.com
katherine.danial@pillsburylaw.com
nicole.steinberg@pillsburylaw.com

*Counsel for Plaintiff Rock Spring Plaza II,
LLC*

CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2024, the foregoing Motion to Unseal Crime-Fraud Information was served by electronic filing on all counsel of record through the Court's electronic filing system.

/s/ Nicole Steinberg
Nicole Steinberg

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE

6500 CHERRYWOOD LANE
GREENBELT, MARYLAND 20770
301-344-0632

MEMORANDUM

TO: Counsel of Record

FROM: Judge Peter J. Messitte

RE: Rock Spring Plaza II, LLC v. Investors Warranty of Am., LLC, et al.
No. 20-cv-1502

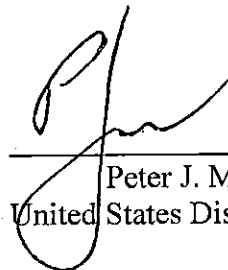
DATE: April ²⁴, 2024

* * *

The Court is in receipt of the parties' respective briefs with respect to Rock Spring Plaza II, LLC ("Plaza")'s Motion to Unseal Crime-Fraud Information (ECF No. 392). The Court has concerns related to Plaza's Motion that are not fully addressed by the parties' briefing.

Accordingly, the Court **WILL HOLD** a telephone conference with counsel for the parties at 11:00 a.m. on Wednesday, May 1, 2024. Chambers will contact counsel with the dial-in information for the telephone conference. The currently operative briefing deadlines on the parties' dispositive motions (*see* ECF No. 399) are **STAYED** pending further order of the Court.

Despite the informal nature of this ruling, it shall constitute an Order of the Court and the Clerk is directed to docket it accordingly.



Peter J. Messitte
United States District Judge

CC: Court file
Counsel of Record

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

ROCK SPRING PLAZA II, LLC,) CIVIL ACTION
) NO. PJM-20-1502
Plaintiff,)
)
v.)
)
INVESTORS WARRANTY OF AMERICA,)
LLC et al.,)
)
Defendants.)

TRANSCRIPT OF TELEPHONIC PROCEEDINGS
BEFORE THE HONORABLE PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE
WEDNESDAY, MAY 1, 2024; 11:04 A.M.
GREENBELT, MARYLAND

APPEARANCES:

FOR THE PLAINTIFF:

PILLSBURY WINTHROP SHAW PITTMAN LLP
BY: WILLIAM M. BOSCH, ESQUIRE
1200 Seventeenth Street, NW
Washington, DC 20036
(202) 663-8761

FOR THE DEFENDANT INVESTORS WARRANTY OF AMERICA, LLC:

ARNALL GOLDEN GREGORY
BY: REBECCA A. DAVIS, ESQUIRE
171 17th Street NW, Suite 2100
Atlanta, Georgia 30363
(404) 873-8500

Also Present: Paul Rubin, Troy Taylor, Rock Springs Drive

Renee A. Ewing, RMR, CRR - (301) 344-3227
Federal Official Court Reporter
6500 Cherrywood Lane, Suite 200
Greenbelt, Maryland 20770

COMPUTER-AIDED TRANSCRIPTION OF STENOTYPE NOTES

1 APPEARANCES (Continued):
2 FOR THE DEFENDANT ROCK SPRINGS DRIVE, LLC:
3 KROPF MOSELEY PLLC
4 BY: SARA KROPF, ESQUIRE
5 1100 H Street NW, Suite 1220
6 Washington, DC 20005
7 (202) 627-6900
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 THE COURT: This is Judge Messitte here.

2 Renee, are you there, our court reporter?

3 THE COURT REPORTER: Yes, Judge. I'm here.

4 THE COURT: Very good.

5 Counsel, identify yourselves every time you speak; if you
6 will just remember to say who it is who is speaking so that our
7 court reporter can note it.

8 For Rock Spring Plaza, Counsel, identify yourselves.

9 MR. BOSCH: Good morning, Your Honor. It's Bill
10 Bosch on behalf of the plaintiff.

11 THE COURT: All right. And for Investors Warranty of
12 America?

13 MS. DAVIS: Rebecca Davis for Investors Warranty of
14 America.

15 THE COURT: And for Rock Springs Drive?

16 MS. KROPF: Sara Kropf for Rock Springs Drive, and
17 the principals of Rock Springs Drive are on as well, Your
18 Honor.

19 THE COURT: And who would that be?

20 MS. KROPF: It's Troy Taylor, and I believe Paul
21 Rubin is on as well. Thank you.

22 THE COURT: All right. The second gentleman again,
23 will you give me the name?

24 MS. KROPF: Sure. Paul Rubin, R-U-B-I-N.

25 THE COURT: Okay. Well, I set this because we have

1 this issue before us I have got to deal with, candidly, what I
2 have characterized, and I don't think counsel disagree, a murky
3 Fourth Circuit decision on the -- on the appeal.

4 Let me spell out for you some of my concerns as I sort of
5 think through all this. And, Mr. Bosch, let me start I guess
6 by asking you a question. Is it your intention to, well,
7 publish the Court's opinion to the jury or extract the actual
8 excerpts from counsel's letter to the defendant? What do you
9 want to do with this situation as far as trial is concerned
10 now? How would you use it?

11 MR. BOSCH: Your Honor, this is Bill Bosch.

12 I do not anticipate publishing the memorandum opinion
13 itself, which I, frankly, don't think would be appropriate.
14 But there is evidence recited in the memorandum opinion that
15 may be introduced, and, of course, it's hard for me to figure
16 out, in a vacuum, the context. So there is the -- the
17 memorandum opinion are just one of the three pieces of
18 information that we believe the Fourth Circuit ruled to not be
19 maintained under seal.

20 As far as the transcript goes, not having seen that, nor
21 having seen the letter submission, I presently don't have any
22 contemplated use because I don't know what it says. The
23 transcript, like any other transcript, may be admissible
24 depending on the circumstances.

25 The letter opinion -- the letter submission, again, I

1 don't know if it has any evidentiary value. It may have value
2 to the arguments to this Court on summary judgment.

3 But as to your specific question as to the memorandum
4 opinion, I -- I don't anticipate publishing that. There is
5 evidence in it that may be admissible at this point.

6 THE COURT: Well, let me be characterizing,
7 paraphrasing. One counsel wrote a letter saying, If you do
8 this and transfer the 99-year lease to some entity and you wait
9 two years, that will take care of any possible challenge for
10 fraudulent conveyance. I mean, that's what the letter says, in
11 effect.

12 Is that the kind of thing that you say might be extracted
13 and presented to the jury?

14 MR. BOSCH: Yes. That particular comment might be
15 extracted and presented. Whether it's done by way of
16 impeachment or whether it's direct evidence, I can't say just
17 yet.

18 You recall, Judge, that at the beginning of this case,
19 there were representations made by counsel for the defendants
20 that this was a good faith assignment and that there was no --
21 it was not made with any contemplation of defaulting or -- you
22 know, or leaving the landlord in a position where it had to
23 chase an empty shell, and you know that's not true. So we are
24 not going back.

25 Going forward, there may be questions as to not just the

1 lawyer's duty of candor moving for summary judgment, but their
2 own witnesses' testimony, including the witnesses on the phone
3 call today, Paul Rubin and Troy Taylor of RSD, what was -- what
4 was contemplated at the time of the assignment. And if they
5 were to now say that it was never contemplated that RSD would
6 default, we know that's false, and we could use these
7 statements by way of impeachment. So that's one example.

8 THE COURT: Okay. And let me pass to defendants for
9 a moment and perhaps start with you, Ms. Davis, for IWA. Your
10 position is that nothing should be unsealed and nothing should
11 be presented to the jury relative to any communication between
12 counsel; am I correct?

13 MS. DAVIS: That's essentially correct. I mean, our
14 -- our view is that the Fourth Circuit allowed Mr. Bosch and
15 plaintiff's counsel to review the Court's memorandum opinion
16 which was part and parcel with the Court's order that was
17 vacated. They didn't claw it back. They don't place
18 restrictions on keeping that maintained under seal, certain
19 information maintained under seal. And, you know, it's -- it's
20 vacated. So, regardless of the fact that they didn't claw it
21 back is irrelevant. It's vacated. It was part and parcel with
22 the order that was vacated, and they never said, Now unseal
23 everything else. So no --

24 THE COURT: Well, they did say, though, do they not,
25 that the Trial Court, me, would have discretion in terms of

1 what I unsealed, did they not?

2 MS. DAVIS: No. I don't --

3 THE COURT: They didn't say that?

4 MS. DAVIS: No. They said that the Trial Court did
5 not need to maintain certain information under seal.

6 THE COURT: Well, let's go back specifically to the
7 order because I think it's not as restrictive as you say.

8 Before I get to that, Ms. Kropf, what's your position?
9 Is it the same as Ms. Davis'?

10 MS. KROPF: It is, Your Honor. What Mr. Bosch is
11 proposing to do is to take information in documents that are
12 unquestionably privileged and that the Fourth Circuit said that
13 plaintiffs are not allowed to see. And so to allow them to
14 back door in and use documents that the Fourth Circuit reversed
15 Your Honor's ruling and said, These are privileged, this is not
16 crime-fraud, I think is just a back door to get what they
17 couldn't get through the front door. So I think any way that
18 they would try to use that information would be improper.

19 THE COURT: See, I think you are asking the defendant
20 to grant you relief that the Fourth Circuit didn't give you.
21 You asked for a clarification of their order, you asked to keep
22 everything under seal, and they denied your request. Denies
23 petitioner's request for an order directing the District Court
24 to maintain certain information under seal. They denied that.
25 And you are saying to me, No. What they really said was,

1 Judge, you, Messitte, should grant that now. I mean, that's
2 the problem with the order as it reads. It just doesn't say
3 what you said.

4 And so the way I read it is the Court does have
5 discretion to make that decision and make certain information
6 available. Whether it's under seal or not is a different
7 point, and I will talk about that momentarily.

8 But my sense, as I read defendants' briefs on this point,
9 what you are really asking me is to grant relief that you
10 didn't get in the Fourth Circuit. You didn't get the
11 clarification that you wanted. You didn't get the direction
12 that I couldn't do anything with the -- with the opinion. You
13 simply did not.

14 And now you are saying, Judge, help the Fourth Circuit
15 out here; let's see what you think they really had in mind to
16 do. Candidly, I am just not quite sure what the Court had in
17 mind when they -- they basically vacate the order but not the
18 opinion. But that's neither here nor there.

19 I would agree that the opinion --

20 MS. KROPF: Your --

21 THE COURT: Go ahead.

22 MS. KROPF: I'm sorry. Just for clarification, do
23 you disagree that the memorandum is part and parcel and it's
24 strictly intertwined with the order? I guess I am just not
25 following that.

1 THE COURT: Well, I am not going to agree or
2 disagree. I don't think, frankly -- let's move to this point.
3 I don't think, frankly, and Mr. Bosch agrees, that the opinion,
4 itself, should be made available to the jury. That really
5 would be improper, in my view. Well, whatever the Fourth
6 Circuit may have had in mind there, the opinion, itself.

7 Now, whether excerpts of the opinion should come out,
8 that's the problem here because it's not clear what the Court
9 was vacating. Were they vacating the fact that you were
10 ordered to produce the documents or be held in contempt? Or
11 were they vacating any reference at all to the privileged
12 communications? That, simply, is not clear. And I don't think
13 you got that clarification when you sought it from the Fourth
14 Circuit. That's the problem.

15 Now, maybe, had they dug in deep enough, they'd agree
16 with you, and maybe, which I think is unlikely -- I assume you
17 are going to appeal any decision I make in this regard -- but
18 if they were to look at it a second time, they may come around
19 to your view, but right now, I think the prospect of a second
20 acceptance of a mandamus petition is quite unlikely. But right
21 now, I am not necessarily prepared to give you what you think
22 the Fourth Circuit should have given.

23 The question being, though -- pass the microphone, I
24 guess, back to Mr. Bosch -- so what is it that, with regard to
25 the -- particularly the briefing on the motion to produce the

1 documents and the hearing of the witness that the defendant
2 presented, you are saying you don't know whether that has any
3 relevance or not, or what, or whether you would use it? Let me
4 be clear on that.

5 MR. BOSCH: Well, yes. Not having seen the
6 transcript, nor the letter, I don't know whether it has any
7 evidentiary value. As I said before, I think the transcript
8 may, depending on what the witnesses say or which witnesses get
9 called by the defendants, or, frankly, by the plaintiffs. So,
10 as with any other transcript in a case, it may have evidentiary
11 value, but I can't say in a vacuum.

12 As to their letter opinion, I suspect it doesn't have
13 evidentiary value, but -- again, not having seen it. But both
14 of those may be useful to the Court and may have value in
15 connection with the summary judgment briefing. And I just gave
16 you an example.

17 I can't imagine that Ms. Kropf or Ms. Davis now would,
18 and forgive me for saying it this way, but they wouldn't suborn
19 perjury by having a witness testify falsely that they weren't
20 contemplating default or that the assignment was not done in
21 contemplation of avoiding a fraudulent conveyance claim when
22 there was a default later. They can't do that now. And so
23 those are the types of fact issues that if they become in
24 dispute, then this -- the memo, the transcript may have some
25 bearing on that.

1 THE COURT: Well, let me -- let me follow that issue,
2 particularly on the impeachment issue. Suppose that plaintiff
3 calls as a witness in the case one of the principals of either
4 of the defendants and says, Why did you do this? Why did you
5 make this assignment? When did you contemplate? What was your
6 plan with regarding to do that? Suppose they ask those
7 questions, Did you consider that maybe what you were going to
8 do could arguably be challenged in the fraudulent conveyance?,
9 and the witness says, No, no, that's something we purely
10 understood on our own, would there not be relevant impeachment
11 in the communications with counsel? Could the witness simply
12 get up and say, No, this is all in good faith, when, in fact,
13 there clearly is evidence that, at least cutting in the other
14 direction, that it wasn't?

15 I mean, that's the problem that I have got right now.
16 And I don't think the question would be improper by plaintiff.
17 Why didn't you do this? Why didn't you tell us what you were
18 doing? Why did you not record the assignment? Why did you not
19 tell us who was involved in the beginning? And the answer was,
20 Well, we were just, you know, making our good faith -- well, I
21 am not sure what they were going to say -- effort; how do you
22 handle that? I mean, I need to think it through in terms of
23 how it works out at trial.

24 So I put that to defense counsel right now. What do you
25 do in a situation like that? Anybody going to respond?

1 Ms. Davis?

2 MS. KROPF: I will respond. This is Ms. Kropf.

3 I think there is a few responses, Your Honor. Number one
4 is, with a jury trial in particular, it's impossible to impeach
5 a witness with the Court's opinion. The Court would have to be
6 the witness.

7 THE COURT: Oh, no. The opinion is off the table. I
8 don't think you have to worry about that. I am not --

9 MS. KROPF: Right. But the -- agreed. But the
10 information that's in the opinion that we are arguing about,
11 whether or not it should be used for any purpose whatsoever, is
12 privileged. So if what Your Honor is proposing is to allow
13 Mr. Bosch to impeach in a vacuum because he wouldn't use the
14 opinion, what would he use? The only way to get to the
15 information would be to use the documents, themselves, and Your
16 Honor's opinion has been vacated by the Fourth Circuit on the
17 crime-fraud.

18 THE COURT: Wait. The opinion has not been vacated.

19 MS. KROPF: But, Your Honor, we have to have evidence
20 to use at trial. If he's not going to use the opinion, then
21 what would Your Honor propose that Mr. Bosch could possibly use
22 as admissible evidence at trial to impeach somebody? And I
23 think the only answer we get to are the documents that are
24 privileged. And so I don't think --

25 THE COURT: There is language in the opinion, without

1 even saying that it's in an opinion, that does suggest that
2 there was something inappropriate afoot with the defendants.
3 That's the way I read the evidence at the time.

4 There is other evidence, too, that suggests that they had
5 perhaps not an entirely good faith effort in doing what they
6 did. There is other evidence that cuts that way. But this
7 does certainly undercut it. And I am posing, really, if it
8 were only available for impeachment, what do you do? Are you
9 saying that the question would be off the table; you couldn't
10 even ask what your plan was with regard to the assignment? Is
11 that --

12 MS. KROPF: No. Of course, they could ask that. And
13 I think Mr. Bosch may be forgetting the answer he heard, which
14 is that there -- there certainly were drafts that he was
15 provided that were, you know, not privileged that talked about
16 that.

17 But I think Mr. Bosch is a little bit overstating the
18 evidence here a tad; that there obviously was a contemplation
19 and consideration, for example, of the statute of limitations.
20 So I think that evidence is there, Your Honor. He's not
21 blocked from using the non-privileged information that he has.

22 And, of course, he can ask those questions. We would
23 disagree with Your Honor's characterization that what you are
24 describing is evidence of bad faith. Obviously, that's why we
25 think a jury is the appropriate fact finder here.

1 But he could ask the question, but he cannot impeach with
2 privileged information, period. I think that really would be
3 introducing error into it. It would be the same in any other
4 case. You can always ask questions of a witness. It doesn't
5 mean that if you somehow knew privileged information, that you
6 could impeach them with it. If you have that privileged
7 information because it happens to be held to be not privileged,
8 you could use it.

9 Here, the Fourth Circuit -- I really -- you know, I am
10 not hearing you disagree, Your Honor -- has reversed you on the
11 crime-fraud. The crime-fraud exception does not apply, those
12 documents are privileged, and, therefore, the information in
13 them is privileged; therefore, the testimony of any lawyer who
14 wrote them would be privileged. And that information simply
15 cannot be used at trial as evidence in their case in chief or
16 for impeachment.

17 MR. BOSCH: Your Honor, may I be heard?

18 THE COURT: Go ahead.

19 MR. BOSCH: Your Honor, I have heard it now several
20 times from Ms. Kropf, and I think from Ms. Davis as well, that
21 the Court has been reversed and that the Fourth Circuit found
22 that the crime-fraud exception does not apply. That statement
23 is not found anywhere in the Fourth Circuit's decision.

24 The Fourth Circuit did not find that the crime-fraud
25 exception was a problem. What it did is it vacated the

1 production order, and it expressly ruled not once, but I
2 believe two, maybe even three times, with the memorandum
3 opinion, which included the key evidence that we were referring
4 to. Not the opinion itself, because, as I have said, I do not
5 plan on introducing that to the jury, but the evidence within
6 the memorandum opinion, the Court declined to maintain that
7 under seal, which means it's available.

8 Now, the question is: How does that come in from an
9 evidentiary standpoint? Ms. Kropf is saying that that
10 information is privileged, and, therefore, cannot be used.
11 Actually, that's not what -- the Fourth Circuit didn't vacate
12 the evidence. They had every opportunity to do that, and it
13 didn't claw it back, which means it's available.

14 We now know it's true. Ms. Kropf has characterized how I
15 have characterized the evidence. I have objected. I have
16 posed a hypothetical. If Ms. Kropf or Ms. Davis were to elicit
17 from their witnesses testimony as to their motives, or whether,
18 as the Court posed, I were to do that, and if they were to
19 state something that is inconsistent with the evidence we now
20 know -- we now know that, in fact, they did solicit legal
21 advice about an exit strategy, that's their language; as to
22 assigning the ground lease, their language, to a third party
23 for the purposes of avoiding a fraudulent conveyance in
24 contemplation of defaulting.

25 If they are going to have any witness, including the two

1 gentlemen who are on the line now, say anything that's
2 inconsistent with that, we know that that's false testimony,
3 and you can't hide that falsehood behind, Well, Your Honor,
4 that would force us to disclose privilege. That's precisely
5 why the crime-fraud exception exists.

6 So, I am not quite sure I have heard an answer to the
7 question the Court posed to either Ms. Davis or Ms. Kropf: In
8 the circumstances presented, where that question is posed, why
9 wouldn't this evidence be admissible for purposes of
10 impeachment? They haven't given a clear answer. I think it
11 should be, and we should reserve that until we see the evidence
12 that comes in.

13 If, in fact, Mr. Taylor, who is on the line, testifies
14 inconsistently with the evidence we now know, I ought to be
15 able to use evidence of these documents, the evidence of this
16 information for impeachment purposes. That's what the Fourth
17 Circuit contemplated, I would surmise, given that it expressly
18 declined their request to have that information maintained
19 under seal.

20 THE COURT: All right. I don't need to resolve this
21 at the moment. I pose it to you as one of the concerns that I
22 have got as I confront where we are.

23 Let me ask here a question about jury trials, the
24 defendants' concern. I have no problem with having a jury
25 seeing evidence, go through the entire case, and give an

1 advisory verdict on any points that should ordinarily call for
2 a Court's decision. The jury is going to hear the same
3 evidence, and they will come to its conclusion about whether
4 there are -- have been a cause of action well presented by
5 plaintiff or not. And that certainly can have some influence
6 on the Court's decision as well.

7 So, I don't need to say that there will be no jury issue.
8 All the evidence is the same. It all goes to the jury. They
9 can answer all the counts, even though there may be, from a
10 strictly legal standpoint, issues that are more appropriately
11 for the judge to decide than the jury. That's not a problem,
12 and I am certainly inclined to let that happen because they may
13 come to their conclusion favorable to plaintiff, or not. Or
14 not. But a lot of this stuff is, frankly, out there.

15 Here is another approach, though. And I know that
16 defendants said, We will appeal, again, whatever you decide
17 now. That's your prerogative. I think it's unlikely that it
18 will be accepted, but, you know, maybe the Fourth Circuit will
19 clarify what it's left somewhat murky.

20 I think, though, under the circumstances, we can make
21 certain decisions, though, about where we are in the case and
22 go forward with those now without getting too hung up on the --
23 the specifics.

24 I don't need to decide the issue of impeachment on this
25 issue because it really does depend on what any witness for

1 defendants says.

2 But as far as the other folks are concerned in terms of
3 going through, I don't need to make -- this is a proposal -- I
4 don't need to unseal these documents so much as to make them
5 available to plaintiff's counsel. They don't need to be on the
6 public record. I don't know, for example, that the opinion
7 needs to be on the public record. It doesn't serve defendants
8 very well, frankly, that a trial judge made the finding as it
9 did, and there is some other attorneys who would make comments
10 that perhaps don't reflect positively on that. I don't need to
11 put that out on the public record.

12 The opinion now can remain under seal until we determine
13 the extent to which, if at all, it can be used. And the same
14 would be true with regard to the briefing by -- by defense
15 counsel. The same would be true with regard to defense
16 counsel's presentation of evidence, the ex parte hearing. That
17 can all be kept under seal.

18 But the more immediate question is: Should it be
19 available to the plaintiff to review and decide the extent to
20 which it is relevant? The plaintiff may well decide that, if
21 not all, a substantial part should not go forward, but I don't
22 have a problem saying, at least at this point, that nothing is
23 unsealed at this juncture. But what would happen would be that
24 the documents that are requested would be available to
25 plaintiff's counsel eyes only, if you will, and then we decide

1 the extent to which we hear from plaintiff how they would want
2 to use this evidence at all.

3 And I am not prepared to say that, frankly, all the
4 communication between counsel and the defendants is off the
5 table for all purposes. I don't agree with that. I don't
6 think the Fourth Circuit says that, although I think that's
7 what the defendants wanted the Fourth Circuit to say, and I am
8 not going to necessarily help the Fourth Circuit out here.

9 If they want to clarify a second time around, so be it,
10 and it would, frankly, be helpful if they did. I just don't
11 think the prospect is high that they will take it a second
12 time. It's like, Tell us at every step, Court of Appeals,
13 whether you are right or wrong, and they usually don't try
14 cases that way.

15 Here is the longer issue that really lies at the end of
16 the tunnel, if you will. I want to try a case, if at all
17 possible, that is not subject to reversal on the merits on
18 appeal when we get there, and, so, a lot of these questions
19 that we are posing right now sort of raise those issues.

20 Would the Fourth Circuit come back and say, for example,
21 you know, We were wrong when we told the judge he could unseal
22 this -- some of these documents, because that's specifically
23 what defendants asked the Court to do and it did not, but now
24 we have rethought it, and maybe the Court shouldn't have done
25 that. And in the end, two years from now, or whenever two

1 years from the date of the trial, you get an opinion that says,
2 All right, folks, let's unscramble the whole business and send
3 it back for yet another trial. That's my concern as we go down
4 the road: Is there some way to try to insulate the case from
5 that kind of challenge?

6 I see that there are some challenges along the way, and I
7 am not prepared to say absolutely that the Fourth Circuit did
8 not intend for any evidence from the communication with counsel
9 to come forward. Maybe they did. I just don't know exactly
10 what they intended that it would be my decision to unseal.

11 But, again, unsealing is not really what I see as the
12 immediate issue. The issue is more should it be available to
13 plaintiff's counsel to review? If it's not going to come into
14 the trial, if it's going to remain under seal, then, you know,
15 I am not sure there is any real prejudice, ultimately, even
16 though defense counsel may not like it, as an alternative to
17 seal -- to unsealing. So that's what I am posing to you.

18 I am posing to you now, and I know, again, defendants say
19 they are going to try and take that up. Good luck. You may
20 get their attention again. But I would say to make available,
21 since the plaintiff has already seen the opinion, to make
22 available the briefing by defense counsel, make available the
23 ex parte hearing that the expert put on, and let plaintiff's
24 counsel decide what to do. Keep it sealed, keep everything
25 sealed, and with that in mind.

1 And then perhaps we will see how else it goes up when
2 defense counsel wants to appeal from that. Maybe you don't
3 want any of that information available to plaintiff, but my
4 sense is now, yes, I am prepared to make it available, to keep
5 it sealed, to make it available to plaintiff's counsel to
6 review all of that evidence, and they can decide what they will
7 do or not do. And I am not quite sure that -- well, I don't
8 want to characterize the briefing on the ex parte hearing.
9 That would be for plaintiff's counsel to decide.

10 Now, I want to get your reaction to that approach and see
11 where we are. Mr. Bosch, I'd like to hear from you first.

12 MR. BOSCH: Your Honor, obviously, I have no concerns
13 with the Court's approach with respect to sealing. I think,
14 again, we are all leading theories as to what the Fourth
15 Circuit was contemplating here, but the notion that those
16 documents would be available to plaintiff, and, therefore, it
17 would be in the records for appeal, I think is important.
18 Whether they are available to the public, it doesn't -- that's
19 not something that the plaintiff has an opinion about at this
20 point.

21 As for the longer term issue that the Court raised, I
22 think, as Your Honor intimated, it's unusual for the Court of
23 Appeals, coming in on an interlocutory basis, to sort of be
24 second guessing evidentiary rulings and merits rulings.

25 This is the kind of situation where I think the plaintiff

1 deserves the opportunity to present the case, and if there is
2 error involved, that's error that will fall on the plaintiff,
3 and that's assuming even that the plaintiff prevails. Right?

4 I think, at some point, the defendants are going to have
5 to make their own decisions as well about what evidence they
6 elicit from their own witnesses knowing that this information
7 is in the record. And, so, I think that's a decision best left
8 for after trial.

9 And I concur, as you saw from our motion on the jury
10 trial issue, we don't think that there is a jury trial by
11 right, but if there is an advisory jury, and, ultimately, it's
12 the Court that makes the decisions, I think Your Honor can
13 address how, if at all, this testimony bears on the Court's
14 ultimate decisions.

15 As Ms. Kropf, herself, indicated, there is ample
16 evidence, apart from the specific information that's reflected
17 in the memorandum opinion, that I think would substantiate
18 plaintiff's claims. So we can address that issue in due
19 course. It need not be addressed today.

20 THE COURT: Ms. Kropf.

21 MS. KROPF: Well, not to put too fine of a point on
22 it, Your Honor, I think the easiest way to avoid creating a
23 record here that will have error in it and could very well be
24 reversed under appeal is to allow the plaintiff any further
25 access to any privileged information of IWA.

1 With respect to -- you know, we believe, you know, that
2 there is an entitlement to a jury trial, for a jury to decide
3 the claim, but I think, Your Honor, I think two things. One
4 is, if you are going to issue an order -- if you are going to
5 rule that these documents will be provided to plaintiffs, that
6 needs to be in a written order so that that can be appealed or
7 that can -- IWA can file a petition for mandamus on an order,
8 not just based on our transcript today, but an order about what
9 you plan to -- what you -- what you would order to be revealed
10 to plaintiff so that it's clear for the Fourth Circuit, and
11 that way, if IWA decides to do that, that they can. I think --
12 I think that is most important.

13 I am still struggling with the idea, and maybe Your Honor
14 can explain it for -- if the Fourth Circuit granted the
15 petition for mandamus and vacated the production order, what
16 would the reasoning be to allow the plaintiffs access to
17 additional information that is attorney/client privileged? The
18 hearing, as I understand it, and I wasn't there, wasn't an
19 expert witness; it was a fact witness. What would be Your
20 Honor's explanation for giving plaintiffs additional access to
21 information which they'd only have access through if Your Honor
22 found there was crime-fraud?

23 I guess I am still confused, given the Fourth Circuit's
24 vacating of the production order, what would the reasoning be
25 to give them -- give plaintiff additional access to that

1 information? And that may -- I think if you can explain that,
2 I might --

3 THE COURT: No. I don't necessarily need to explain
4 it. I think there is confusion in the decision, quite
5 candidly. I am not going to try and rescue the Fourth
6 Circuit's rationale. It's confusing. I can say to you that
7 maybe -- I know that's what you wanted; that's what you asked
8 for clarification of. That's what was denied. That's the
9 second time, if you will. So to say to me now, Judge, help the
10 Fourth Circuit out, clarify what we couldn't get them to
11 clarify, I am not going to do that.

12 Now, it's Mr. Bosch who really bears the risk, if you
13 will, of if he makes certain choices from an evidentiary
14 standpoint, and I go along with it and it goes up on appeal,
15 and the Fourth Circuit thinks about it again and says, You
16 know, we were wrong, none of this should have come in, okay,
17 well, so be it. So be it.

18 But right now, I am not going to go with the defendants
19 on what I think was your failed attempt to get the Fourth
20 Circuit to clarify it. They simply did not. I know you think,
21 Well, they should have, and maybe they should have, but they
22 didn't. They did not. They made the distinction, and so I am
23 going to try and do my best with it.

24 Now, here is what -- and I agree with you, an order is
25 appropriate.

1 I have said a jury trial is appropriate on all counts in
2 terms of at least some of it being advisory. We can sort that
3 out I think over time. That's not really a concern, an
4 immediate concern.

5 But certainly what I would propose to do in an order
6 short term is to say that I am prepared to -- to make the
7 briefing and the hearing available to counsel for the plaintiff
8 eyes only, and not to unseal it, but to make it available, and
9 to do that. And then, I don't know whether you could say this
10 in this order, but the Court understands that the entire
11 opinion certainly is not -- understanding the entire opinion is
12 not going in, but the extent to which excerpts from the
13 communication with counsel might come in, the Court reserves on
14 that. And you can, perhaps, take that up and raise, Well, a
15 judge shouldn't be able to do that. Well, maybe the Fourth
16 Circuit would agree with you. Maybe they won't.

17 And then, as I say, Mr. Bosch bears the burden, bears the
18 risk of the Court making an incorrect decision if I say, Go
19 ahead and do it, you want to do it, let's give it a shot, or
20 maybe not. That's why I posed the longer question. I mean,
21 from the standpoint of strategy, Mr. Bosch may decide, you
22 know, it's better not to port that risk at all and go with the
23 evidence that he already has without inviting that. Up to him.
24 I mean, right now, that's a call I don't need to make.

25 But, certainly, I am prepared to say that this

1 information will not be unsealed, but it should be available
2 eyes only to plaintiff's counsel, and then we will see the
3 extent to which it has any relevance at all. Again, I don't
4 need to make that judgment at the moment.

5 Now, in the short term, I gather defense counsel would
6 like to have the Court stay its order until the Fourth Circuit
7 -- I don't know whether you want me to stay it until the Fourth
8 Circuit rules, or whether they deny a second petition for
9 mandamus, I -- I don't know what you have in mind to do that.

10 I don't want to prejudice defendants' case, but I don't
11 want to give you -- give away things that I don't think the
12 Fourth Circuit has given you right now. I just, I don't,
13 because there is a lot of their argument on -- on -- in this
14 case to be made, and see how it gets done.

15 So I am prepared to enter an order, based on the
16 discussion today, that I will order that the briefing and the
17 ex parte hearing be available to counsel for plaintiff eyes
18 only, and that the Court would defer on the extent to which any
19 reference might be, depending on the circumstances, any
20 reference might be made to communications between counsel and
21 -- and defendants.

22 And, again, I think the real issue may come up by way of
23 impeachment because I don't know how, frankly, the defendants
24 are going to say, We did this all in good faith, and not be at
25 least subject to a challenge, Well, maybe it wasn't. I mean, I

1 am not saying it's one way or the other. I think defense
2 counsel needs to understand that. I mean, I don't buy 100
3 percent defendants' view of the case. I know you have a view,
4 and I will let you present it, but the mere fact that I would
5 say this can be done, it seems to me the evidence may well
6 allow this to be done. Right now, there is more to be said.

7 So I don't know what more you want to say. We can seal
8 the discussion today if you need to. I don't know that you
9 need to, but that's up to you. And I'm certainly prepared to,
10 although I want to hear you on this, stay the actual production
11 of the transcript and the -- of the hearing and the briefing.

12 Mr. Bosch, what do you think about that?

13 MR. BOSCH: Your Honor --

14 THE COURT: We have a trial in December, so I don't
15 know what happens with that. You are not going -- even if they
16 take -- the likelihood is, just based on my experience, that
17 they will probably reject the second request for petition, and
18 if they do so, it will be fairly quick. If they don't, then
19 you are talking about an extended period of time to get the
20 ruling. So that's another thing to think about with a December
21 trial.

22 MR. BOSCH: Your Honor, this is Bill Bosch.

23 You mentioned a December trial. Our understanding from
24 the Court is that the trial would be set for August, September.
25 That's the trial period that we are now contemplating.

1 THE COURT: Sorry. I am thinking of something else.
2 What about -- go ahead. Finish up.

3 MR. BOSCH: As far as the stay is concerned, no
4 objection to staying the order requiring that these documents
5 be produced to counsel under the eyes only provision
6 contemplated by the Court provided we have some undertaking
7 from IWA as to when it would submit its petition. If you had
8 -- you can't have further delay. There needs to be some -- if
9 they have already contemplated doing this, I can't imagine they
10 will need too much time to present this petition. There ought
11 to be some understanding that they are going to be presenting,
12 if they do decide to do this, within a short time frame.

13 And separate and apart from that, I don't think that this
14 issue in any way should impact briefing on summary judgment.
15 We need, for example -- and, again, I can't presume what the
16 defendants would be moving for summary judgment on with respect
17 to the fraud issues given the evidence that Ms. Kropf just
18 identified previously; however, if they want to move for
19 summary judgment on Count One, that should proceed regardless
20 of how this issue gets resolved by the Fourth Circuit.

21 So we would hope that whatever their petition does
22 doesn't stay the underlying proceeding. It need not and it
23 should not.

24 THE COURT: Defense counsel.

25 MS. KROPF: This is Sara Kropf.

1 Well, we don't know if the plaintiffs are moving for
2 summary judgment, Your Honor. You know, obviously, we can file
3 briefs. If -- however, if this evidence is going to be part of
4 the case, it puts us at a disadvantage to not include it in an
5 opening brief, to have the plaintiff be able to respond using
6 this information. You know, it -- it puts us at a disadvantage
7 to not know the scope.

8 Obviously, when you file summary judgment, the idea is
9 you have finished discovery, and, apparently, the plaintiffs
10 plan to keep pressing this point. So, while we don't oppose
11 keeping the schedule moving, at the same time, it seems a
12 little odd when we don't know what the scope of discovery is at
13 this point.

14 And this is important information. It clearly is
15 important to Your Honor. You are using things like, This
16 negates good faith, so it's obviously something for you, who
17 will be deciding the motions for summary judgment, it's
18 obviously extremely important to you.

19 If this information is not going to be allowed or in
20 evidence, you shouldn't, as the decider of the motions for
21 summary judgment, be using it, obviously, in your thinking.
22 And so it's a little -- I am kind of of two minds on it. It's
23 not that we oppose moving the schedule forward, but I don't
24 know how we do that without knowing whether this evidence that
25 Mr. Bosch thinks is important is going to come into -- coming

1 into the case.

2 THE COURT: Well, I would remind you that you asked
3 me to be removed from the case, and that was denied, so I am in
4 the case whether you like it or not, and I am going to try and
5 give you a fair trial.

6 But put that off the table if you are worried about my
7 thinking. I will do the best I can to be impartial about this,
8 but that to sort of say that somehow my thinking is already
9 tainted, the evidence is and will be what it is, and I will
10 make the judgment, insofar as I am the one authorized to do so,
11 I will make it. But put it out of mind as far as whether I
12 know or don't know something. If it's off the table entirely,
13 and, as I say, unless that issue is accepted by way of a
14 petition for cert., you know, that's a decision that Mr. Bosch
15 is going to have to make about the extent to which it comes in.
16 But, again, it may just be something he wants to do by way of
17 impeachment and not in his case in chief. I don't know. I
18 don't know that he knows right now.

19 Anyway, let's wind this up. I think the short -- the
20 conclusion of the discussion this morning is to say that I will
21 enter an order saying that I will direct that the briefing from
22 defense counsel and the transcript of the hearing of the
23 witness -- the ex parte hearing will be available; that it will
24 be stayed for -- let's talk about the period of time, because I
25 don't know how much time defendant may want to take --

1 defendants, to file another petition for cert., but, obviously,
2 it can't go on forever. I mean, if we are going to try and go
3 forward with the trial August, September, we have got to go
4 forward on that.

5 Let's assume this order goes out today and staying the
6 production of those two items to plaintiff's counsel for some
7 period of time, how soon do you think defendants would file a
8 petition for cert. -- for, sorry, for mandamus?

9 MS. DAVIS: This is Rebecca Davis for IWA.

10 Just so I am clear, are -- are the motions for summary
11 judgment stayed? At this point, I am -- I am trying to
12 understand if the Court is expecting us to work on two things
13 simultaneously? We have the Court's remandment and the motion
14 for summary judgment. And I'm sorry if the Court --

15 THE COURT: Well, I don't know what to say about a
16 motion for summary judgment. Is today the due date for motions
17 for summary judgment?

18 MR. BOSCH: Your Honor, yesterday was the due date,
19 and then Your Honor just suspended that last week when you set
20 this hearing. So, unless Ms. Davis is waiting until the last
21 minute to file a motion for summary judgment, I don't think we
22 are talking about double briefing. In effect, I have not heard
23 yet from the defendants anything about whether they plan to
24 move for summary judgment on the fraud issues. Again, I think
25 that would be unusual given what Ms. Kropf indicated earlier.

1 If that's the case, then there is nothing at issue here
2 that would prevent the parties from proceeding with the
3 briefing on summary judgment.

4 MS. DAVIS: Can I go back to my --

5 THE COURT: Who is speaking now?

6 MS. DAVIS: Rebecca Davis. My question was, Your
7 Honor, you had asked timing with respect to how long it would
8 take for the briefing for the petition for mandamus, and my
9 question was: Is there an expectation that there be
10 simultaneous briefing? I was unclear on what the expectation
11 was as far as from the Court, not Mr. Bosch, timing with
12 respect to when briefs will be due? The deadline was extended.
13 It was today, and it was extended, and so I am just trying to
14 understand what the Court anticipates with respect to that
15 before I get to --

16 THE COURT: I think it would be helpful -- it would
17 be helpful to get to the issue of the order and any petition
18 for cert. out of the way as quickly as possible. Obviously, if
19 they accept the review of the petition, that's going to have
20 some implication on the speed with which we need to go forward
21 for the trial. And if they deny it right away, then we just go
22 forward.

23 So, the summary judgment -- I don't know whether the
24 plaintiff is intending to file a motion for summary judgment, I
25 assume defendants might, but that can simply go forward. And I

1 think it's already May. June, July, September -- or July,
2 August -- well, we probably can get it resolved before that
3 trial date, that summary judgment. And maybe the issue of the
4 petition for cert. gets resolved that quickly, too. I would
5 say do the petition for cert. -- I'm sorry, I keep saying
6 petition for cert. -- petition for mandamus, get that done
7 quickly. We will enter the order today, so, you know, you have
8 it from today to go forward, whatever the period of time is.
9 30 days? I don't know what the number is. So do that first.
10 Do that first. And then you can file your motions for summary
11 judgment. If you can work out, by agreement, when the motions
12 for -- or the motion -- I assume it's just defendants, but
13 maybe plaintiff -- would be filed, can you agree on a schedule
14 for that?

15 MR. BOSCH: Your Honor, why don't we say ten days
16 from today to file summary judgment motions?

17 THE COURT: Well, and what about the defendant would
18 have to be filing the petition for mandamus in the interim or
19 that quickly as well. Is that correct?

20 MR. BOSCH: I think they should file that within a
21 week, and if they need an extra -- you know, if they need a
22 week to file the petition and then an extra week, say two
23 weeks. Again, the motion for summary judgment should have been
24 done by now. If they need two weeks for whatever they want to
25 fine tune, I think that's appropriate. But the week for the

1 petition for the writ of mandamus, they have already threatened
2 it; they have already known what the issue is; I don't imagine
3 they would need more than a week to pull that writ together,
4 that petition for a writ together. As we all know, getting
5 this thing expedited, getting it teed up for the Court for
6 review, getting the summary judgment issues resolved is
7 necessary because we have a trial coming in August or
8 September.

9 MS. DAVIS: And I disagree. We did not have any
10 indication. We didn't even have advanced indication as to what
11 this call would be about, at least the specifics of it. So we
12 do need time to pull a petition together. I don't think seven
13 days is -- is acceptable for a petition. We may get it done
14 within seven days. We may not get it done within seven days.

15 THE COURT: Well, I don't agree with you you didn't
16 know what was coming. You may not have known of notice of this
17 call, but you have been saying all along you will appeal
18 whatever the Court decides. You have been rather clear about
19 that. So I am trying to sort of package it in a way that you
20 can simply go up on it, and I think ten days is probably
21 reasonable to file your petition for mandamus, and that's the
22 way to do it. But you are not taken by surprise by this by any
23 means. You knew that was coming.

24 The issue of summary judgment can sort of come within,
25 let's say, ten days following that. Ten days for the petition

1 for mandamus, ten days for the motion for summary judgment.
2 And then respond -- how soon can you answer -- I don't know.
3 Are you going to answer the petition for cert., Mr. Bosch, and
4 the motion for summary judgment?

5 MR. BOSCH: I anticipate we will be able to do both,
6 yes, Your Honor.

7 THE COURT: All right. Well, then, your responses
8 would be due ten days following the filing by the defendants.

9 You are not filing a motion for summary judgment of your
10 own, I gather?

11 MR. BOSCH: We are going to file a motion for summary
12 judgment on the affirmative defenses. The Court may recall we
13 moved to strike, and the Court said Your Honor's practice is
14 not typically to resolve those issues until there has been some
15 discovery, and invited the plaintiffs to revisit that issue on
16 summary judgment, and that's what we intend to do.

17 THE COURT: Well, then, your opposition to their
18 motion for summary judgment and your own motion for summary
19 judgment should be filed simultaneously, and then ten days
20 following each of those periods for a response. And I may or
21 may not hold a hearing on the motion for summary judgment, the
22 motions. I may just decide that on the papers.

23 Is there anything else?

24 MS. KROPF: Your Honor, this is Sara Kropf.

25 Could we have the plaintiff's motion filed the same day

1 as our motions for summary judgment? I have a trial at the end
2 of May.

3 THE COURT: No. I intended that, Ms. Kropf.

4 MS. KROPF: Oh, okay. So ten days -- just to make
5 sure I am straight, ten days, assuming you get the order out
6 today, ten days from today, IWA would potentially file its
7 petition for mandamus; ten days after that, both sides would
8 file whatever motions for summary judgment they have?

9 THE COURT: Right. And then, I guess, ten days after
10 that, oppositions. Well, let me say, with regard to the
11 petition for mandamus, defendant -- sorry, plaintiff will want
12 to respond. Ten days to respond to that. I use the ten-day
13 frame for motions and oppositions, and then we will see where
14 we are. We will send an order out today.

15 MR. BOSCH: The mandamus petition, there is no
16 obligation for the plaintiffs to respond unless the Fourth
17 Circuit invites a response from us, but it's the opposition to
18 the summary judgment motions --

19 THE COURT: I think the way to do it, then, is to
20 send a letter to the Court saying what you just said just so
21 the record is complete that we are not expecting a response
22 from the plaintiff.

23 All right. Anything else? All right, folks. We will
24 enter the order, as I said, today, and then you can take it
25 from there. Thank you, folks. Bye-bye.

1 MR. BOSCH: Thank you, Your Honor.
2 (The proceedings were concluded at 11:53 a.m.)
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, Renee A. Ewing, an Official Court Reporter for the United States District Court for the District of Maryland, do hereby certify that the foregoing is a true and correct transcript of the stenographically reported proceedings taken on the date and time previously stated in the above matter; that the testimony of witnesses and statements of the parties were correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription to the best of my ability; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

/s/ Renee A Ewing

Renee A. Ewing, RPR, RMR, CRR
Official Court Reporter
May 2, 2024

/	accept ^[1] - 32:19 acceptable ^[1] - 34:13	Appeals ^[2] - 19:12, 21:23	behalf ^[1] - 3:10 behind ^[1] - 16:3	certain ^[6] - 6:18, 7:5, 7:24, 8:5, 17:21, 24:13
/s ^[1] - 38:15	acceptance ^[1] - 9:20	APPEARANCES ^[2] - 1:12, 2:1	best ^[4] - 22:7, 24:23, 30:7, 38:11	certainly ^[8] - 13:7, 13:14, 17:5, 17:12, 25:5, 25:11, 25:25, 27:9
1	accepted ^[2] - 17:18, 30:13	apply ^[2] - 14:11, 14:22	better ^[1] - 25:22	certify ^[1] - 38:5
1 ^[1] - 1:11 100 ^[1] - 27:2 1100 ^[1] - 2:4 11:04 ^[1] - 1:11 11:53 ^[1] - 37:2 1200 ^[1] - 1:15 1220 ^[1] - 2:4 171 ^[1] - 1:19 17th ^[1] - 1:19	access ^[5] - 22:25, 23:16, 23:20, 23:21, 23:25 action ^[2] - 17:4, 38:12 ACTION ^[1] - 1:4 actual ^[2] - 4:7, 27:10 additional ^[3] - 23:17, 23:20, 23:25 address ^[2] - 22:13, 22:18 addressed ^[1] - 22:19 admissible ^[4] - 4:23, 5:5, 12:22, 16:9 advanced ^[1] - 34:10 advice ^[1] - 15:21 advisory ^[3] - 17:1, 22:11, 25:2 afoot ^[1] - 13:2 agree ^[8] - 8:19, 9:1, 9:15, 19:5, 24:24, 25:16, 33:13, 34:15 agreed ^[1] - 12:9 agreement ^[1] - 33:11 agrees ^[1] - 9:3 ahead ^[4] - 8:21, 14:18, 25:19, 28:2 AIDED ^[1] - 1:25 aided ^[1] - 38:10 al ^[1] - 1:7 allow ^[5] - 7:13, 12:12, 22:24, 23:16, 27:6 allowed ^[3] - 6:14, 7:13, 29:19 alternative ^[1] - 20:16 America ^[2] - 3:12, 3:14 AMERICA ^[2] - 1:7, 1:17 ample ^[1] - 22:15 answer ^[8] - 11:19, 12:23, 13:13, 16:6, 16:10, 17:9, 35:2, 35:3 anticipate ^[3] - 4:12, 5:4, 35:5 anticipates ^[1] - 32:14 anyway ^[1] - 30:19 apart ^[2] - 22:16, 28:13 appeal ^[9] - 4:3, 9:17, 17:16, 19:18, 21:2, 21:17, 22:24, 24:14, 34:17 appealed ^[1] - 23:6	approach ^[3] - 17:15, 21:10, 21:13 appropriate ^[5] - 4:13, 13:25, 24:25, 25:1, 33:25 appropriately ^[1] - 17:10 arguably ^[1] - 11:8 arguing ^[1] - 12:10 argument ^[1] - 26:13 arguments ^[1] - 5:2 ARNALL ^[1] - 1:18 assigning ^[1] - 15:22 assignment ^[6] - 5:20, 6:4, 10:20, 11:5, 11:18, 13:10 assume ^[4] - 9:16, 31:5, 32:25, 33:12 assuming ^[2] - 22:3, 36:5 Atlanta ^[1] - 1:19 attempt ^[1] - 24:19 attention ^[1] - 20:20 attorney/client ^[1] - 23:17 attorneys ^[1] - 18:9 August ^[4] - 27:24, 31:3, 33:2, 34:7 authorized ^[1] - 30:10 available ^[22] - 8:6, 9:4, 13:8, 15:7, 15:13, 18:5, 18:19, 18:24, 20:12, 20:20, 20:22, 21:3, 21:4, 21:5, 21:16, 21:18, 25:7, 25:8, 26:1, 26:17, 30:23 avoid ^[1] - 22:22 avoiding ^[2] - 10:21, 15:23	between ^[3] - 6:11, 19:4, 26:20 Bill ^[3] - 3:9, 4:11, 27:22 bit ^[1] - 13:17 blocked ^[1] - 13:21 BOSCH ^[18] - 1:14, 3:9, 4:11, 5:14, 10:5, 14:17, 14:19, 21:12, 27:13, 27:22, 28:3, 31:18, 33:15, 33:20, 35:5, 35:11, 36:15, 37:1 Bosch ^[21] - 3:10, 4:5, 4:11, 6:14, 7:10, 9:3, 9:24, 12:13, 12:21, 13:13, 13:17, 21:11, 24:12, 25:17, 25:21, 27:12, 27:22, 29:25, 30:14, 32:11, 35:3 brief ^[1] - 29:5 briefing ^[14] - 9:25, 10:15, 18:14, 20:22, 21:8, 25:7, 26:16, 27:11, 28:14, 30:21, 31:22, 32:3, 32:8, 32:10 briefs ^[3] - 8:8, 29:3, 32:12 burden ^[1] - 25:17 business ^[1] - 20:2 buy ^[1] - 27:2 BY ^[3] - 1:14, 1:18, 2:3 bye ^[2] - 36:25 bye-bye ^[1] - 36:25	challenged ^[1] - 11:8 challenges ^[1] - 20:6 characterization ^[1] - 13:23 characterize ^[1] - 21:8 characterized ^[3] - 4:2, 15:14, 15:15 characterizing ^[1] - 5:6 chase ^[1] - 5:23 Cherrywood ^[1] - 1:23 chief ^[2] - 14:15, 30:17 choices ^[1] - 24:13 Circuit ^[35] - 4:3, 4:18, 6:14, 7:12, 7:14, 7:20, 8:10, 8:14, 9:6, 9:14, 9:22, 12:16, 14:9, 14:21, 14:24, 15:11, 16:17, 17:18, 19:6, 19:7, 19:8, 19:20, 20:7, 21:15, 23:10, 23:14, 24:10, 24:15, 24:20, 25:16, 26:6, 26:8, 26:12, 28:20, 36:17 Circuit's ^[3] - 14:23, 23:23, 24:6 circumstances ^[4] - 4:24, 16:8, 17:20, 26:19 CIVIL ^[1] - 1:4 claim ^[2] - 10:21, 23:3 claims ^[1] - 22:18 clarification ^[5] - 7:21, 8:11, 8:22, 9:13, 24:8 clarify ^[5] - 17:19, 19:9, 24:10, 24:11, 24:20 claw ^[3] - 6:17, 6:20, 15:13 clear ^[7] - 9:8, 9:12, 10:4, 16:10, 23:10, 31:10, 34:18 clearly ^[2] - 11:13, 29:14 coming ^[5] - 21:23, 29:25, 34:7, 34:16, 34:23 comment ^[1] - 5:14
2				
2 ^[1] - 38:17 200 ^[1] - 1:23 20005 ^[1] - 2:4 20036 ^[1] - 1:15 202 ^[2] - 1:16, 2:5 2024 ^[2] - 1:11, 38:17 20770 ^[1] - 1:23 2100 ^[1] - 1:19				
3				
30 ^[1] - 33:9 301 ^[1] - 1:22 30363 ^[1] - 1:19 344-3227 ^[1] - 1:22				
4				
404 ^[1] - 1:20				
6				
627-6900 ^[1] - 2:5 6500 ^[1] - 1:23 663-8761 ^[1] - 1:16				
8				
873-8500 ^[1] - 1:20				
9				
99-year ^[1] - 5:8				
A				
a.m ^[1] - 37:2 A.M ^[1] - 1:11 ability ^[1] - 38:11 able ^[4] - 16:15, 25:15, 29:5, 35:5 absolutely ^[1] - 20:7		bad ^[1] - 13:24 based ^[3] - 23:8, 26:15, 27:16 basis ^[1] - 21:23 bearing ^[1] - 10:25 bears ^[4] - 22:13, 24:12, 25:17 become ^[1] - 10:23 BEFORE ^[1] - 1:10 beginning ^[2] - 5:18, 11:19	C candidly ^[3] - 4:1, 8:16, 24:5 candor ^[1] - 6:1 cannot ^[3] - 14:1, 14:15, 15:10 care ^[1] - 5:9 case ^[19] - 5:18, 10:10, 11:3, 14:4, 14:15, 16:25, 17:21, 19:16, 20:4, 22:1, 26:10, 26:14, 27:3, 29:4, 30:1, 30:3, 30:4, 30:17, 32:1 cases ^[1] - 19:14 cert ^[8] - 30:14, 31:1, 31:8, 32:18, 33:4, 33:5, 33:6, 35:3	

comments [1] - 18:9
communication [4] - 6:11, 19:4, 20:8, 25:13
communications [3] - 9:12, 11:11, 26:20
complete [1] - 36:21
COMPUTER [1] - 1:25
computer [1] - 38:10
COMPUTER-AIDED [1] - 1:25
computer-aided [1] - 38:10
concern [4] - 16:24, 20:3, 25:3, 25:4
concerned [3] - 4:9, 18:2, 28:3
concerns [3] - 4:4, 16:21, 21:12
concluded [1] - 37:2
conclusion [3] - 17:3, 17:13, 30:20
concur [1] - 22:9
confront [1] - 16:22
confused [1] - 23:23
confusing [1] - 24:6
confusion [1] - 24:4
connection [1] - 10:15
consider [1] - 11:7
consideration [1] - 13:19
contemplate [1] - 11:5
contemplated [6] - 4:22, 6:4, 6:5, 16:17, 28:6, 28:9
contemplating [3] - 10:20, 21:15, 27:25
contemplation [4] - 5:21, 10:21, 13:18, 15:24
contempt [1] - 9:10
context [1] - 4:16
Continued [1] - 2:1
conveyance [4] - 5:10, 10:21, 11:8, 15:23
correct [4] - 6:12, 6:13, 33:19, 38:6
correctly [1] - 38:9
Counsel [1] - 3:8
counsel [32] - 3:5, 4:2, 5:7, 5:19, 6:12, 6:15, 11:11, 11:24, 18:5, 18:15, 18:25, 19:4, 20:8, 20:13, 20:16, 20:22, 20:24, 21:2, 21:5, 21:9, 25:7, 25:13, 26:2, 26:5, 26:17, 26:20, 27:2, 28:5, 28:24, 30:22, 31:6, 38:12

counsel's [2] - 4:8, 18:16
Count [1] - 28:19
counts [2] - 17:9, 25:1
course [4] - 4:15, 13:12, 13:22, 22:19
COURT [39] - 1:1, 3:1, 3:3, 3:4, 3:11, 3:15, 3:19, 3:22, 3:25, 5:6, 6:8, 6:24, 7:3, 7:6, 7:19, 8:21, 9:1, 11:1, 12:7, 12:18, 12:25, 14:18, 16:20, 22:20, 24:3, 27:14, 28:1, 28:24, 30:2, 31:15, 32:5, 32:16, 33:17, 34:15, 35:7, 35:17, 36:3, 36:9, 36:19
Court [39] - 1:22, 5:2, 6:25, 7:4, 7:23, 8:4, 8:16, 9:8, 10:14, 12:5, 14:21, 15:6, 15:18, 16:7, 19:12, 19:23, 19:24, 21:21, 21:22, 22:12, 25:10, 25:13, 25:18, 26:6, 26:18, 27:24, 28:6, 31:12, 31:14, 32:11, 32:14, 34:5, 34:18, 35:12, 35:13, 36:20, 38:3, 38:4, 38:17
court [2] - 3:2, 3:7
Court's [9] - 4:7, 6:15, 6:16, 12:5, 17:2, 17:6, 21:13, 22:13, 31:13
creating [1] - 22:22
crime [8] - 7:16, 12:17, 14:11, 14:22, 14:24, 16:5, 23:22
crime-fraud [8] - 7:16, 12:17, 14:11, 14:22, 14:24, 16:5, 23:22
CRR [2] - 1:22, 38:16
cuts [1] - 13:6
cutting [1] - 11:13

D

date [5] - 20:1, 31:16, 31:18, 33:3, 38:7
Davis [10] - 3:13, 6:9, 10:17, 12:1, 14:20, 15:16, 16:7, 31:9, 31:20, 32:6
DAVIS [9] - 1:18, 3:13, 6:13, 7:2, 7:4, 31:9, 32:4, 32:6, 34:9
Davis' [1] - 7:9
days [17] - 33:9,

33:15, 34:13, 34:14, 34:20, 34:25, 35:1, 35:8, 35:19, 36:4, 36:5, 36:6, 36:7, 36:9, 36:12
DC [2] - 1:15, 2:4
deadline [1] - 32:12
deal [1] - 4:1
December [3] - 27:14, 27:20, 27:23
decide [13] - 17:11, 17:16, 17:24, 18:19, 18:20, 18:25, 20:24, 21:6, 21:9, 23:2, 25:21, 28:12, 35:22
decider [1] - 29:20
decides [2] - 23:11, 34:18
deciding [1] - 29:17
decision [11] - 4:3, 8:5, 9:17, 14:23, 17:2, 17:6, 20:10, 22:7, 24:4, 25:18, 30:14
decisions [4] - 17:21, 22:5, 22:12, 22:14
declined [2] - 15:6, 16:18
deep [1] - 9:15
default [3] - 6:6, 10:20, 10:22
defaulting [2] - 5:21, 15:24
defendant [6] - 4:8, 7:19, 10:1, 30:25, 33:17, 36:11
DEFENDANT [2] - 1:17, 2:2
defendants [23] - 5:19, 6:8, 10:9, 11:4, 13:2, 17:16, 18:1, 18:7, 19:4, 19:7, 19:23, 20:18, 22:4, 24:18, 26:21, 26:23, 28:16, 31:1, 31:7, 31:23, 32:25, 33:12, 35:8
Defendants [1] - 1:8
defendants' [4] - 8:8, 16:24, 26:10, 27:3
defense [10] - 11:24, 18:14, 18:15, 20:16, 20:22, 21:2, 26:5, 27:1, 28:24, 30:22
defenses [1] - 35:12
defer [1] - 26:18
delay [1] - 28:8
denied [4] - 7:22, 7:24, 24:8, 30:3
denies [1] - 7:22

deny [2] - 26:8, 32:21
describing [1] - 13:24
deserves [1] - 22:1
determine [1] - 18:12
different [1] - 8:6
direct [2] - 5:16, 30:21
directing [1] - 7:23
direction [2] - 8:11, 11:14
disadvantage [2] - 29:4, 29:6
disagree [6] - 4:2, 8:23, 9:2, 13:23, 14:10, 34:9
disclose [1] - 16:4
discovery [3] - 29:9, 29:12, 35:15
discretion [2] - 6:25, 8:5
discussion [3] - 26:16, 27:8, 30:20
dispute [1] - 10:24
distinction [1] - 24:22
DISTRICT [3] - 1:1, 1:2, 1:10
District [3] - 7:23, 38:4
DIVISION [1] - 1:3
documents [14] - 7:11, 7:14, 9:10, 10:1, 12:15, 12:23, 14:12, 16:15, 18:4, 18:24, 19:22, 21:16, 23:5, 28:4
done [10] - 5:15, 10:20, 19:24, 26:14, 27:5, 27:6, 33:6, 33:24, 34:13, 34:14
door [3] - 7:14, 7:16, 7:17
double [1] - 31:22
down [1] - 20:3
drafts [1] - 13:14
Drive [4] - 1:21, 3:15, 3:16, 3:17
DRIVE [1] - 2:2
due [5] - 22:18, 31:16, 31:18, 32:12, 35:8
dug [1] - 9:15
duty [1] - 6:1

E

easiest [1] - 22:22
effect [2] - 5:11, 31:22
effort [2] - 11:21, 13:5
either [2] - 11:3, 16:7
elicit [2] - 15:16, 22:6
empty [1] - 5:23
end [3] - 19:15, 19:25, 36:1

enter [4] - 26:15, 30:21, 33:7, 36:24
entire [3] - 16:25, 25:10, 25:11
entirely [2] - 13:5, 30:12
entitlement [1] - 23:2
entity [1] - 5:8
error [4] - 14:3, 22:2, 22:23
ESQUIRE [3] - 1:14, 1:18, 2:3
essentially [1] - 6:13
et [1] - 1:7
evidence [39] - 4:14, 5:5, 5:16, 11:13, 12:19, 12:22, 13:3, 13:4, 13:6, 13:18, 13:20, 13:24, 14:15, 15:3, 15:5, 15:12, 15:15, 15:19, 16:9, 16:11, 16:14, 16:15, 16:25, 17:3, 17:8, 18:16, 19:2, 20:8, 21:6, 22:5, 22:16, 25:23, 27:5, 28:17, 29:3, 29:20, 29:24, 30:9
evidentiary [7] - 5:1, 10:7, 10:10, 10:13, 15:9, 21:24, 24:13
Ewing [4] - 1:22, 38:3, 38:15, 38:16
ex [5] - 18:16, 20:23, 21:8, 26:17, 30:23
exactly [1] - 20:9
example [6] - 6:7, 10:16, 13:19, 18:6, 19:20, 28:15
exception [4] - 14:11, 14:22, 14:25, 16:5
excerpts [3] - 4:8, 9:7, 25:12
exists [1] - 16:5
exit [1] - 15:21
expectation [2] - 32:9, 32:10
expecting [2] - 31:12, 36:21
expedited [1] - 34:5
experience [1] - 27:16
expert [2] - 20:23, 23:19
explain [3] - 23:14, 24:1, 24:3
explanation [1] - 23:20
expressly [2] - 15:1, 16:17
extended [3] - 27:19,

<p>32:12, 32:13 extent [7] - 18:13, 18:19, 19:1, 25:12, 26:3, 26:18, 30:15 extra [2] - 33:21, 33:22 extract [1] - 4:7 extracted [2] - 5:12, 5:15 extremely [1] - 29:18 eyes [5] - 18:25, 25:8, 26:2, 26:17, 28:5</p>	<p>forever [1] - 31:2 forgetting [1] - 13:13 forgive [1] - 10:18 forward [11] - 5:25, 17:22, 18:21, 20:9, 29:23, 31:3, 31:4, 32:20, 32:22, 32:25, 33:8 Fourth [38] - 4:3, 4:18, 6:14, 7:12, 7:14, 7:20, 8:10, 8:14, 9:5, 9:13, 9:22, 12:16, 14:9, 14:21, 14:23, 14:24, 15:11, 16:16, 17:18, 19:6, 19:7, 19:8, 19:20, 20:7, 21:14, 23:10, 23:14, 23:23, 24:5, 24:10, 24:15, 24:19, 25:15, 26:6, 26:7, 26:12, 28:20, 36:16 frame [2] - 28:12, 36:13 frankly [9] - 4:13, 9:2, 9:3, 10:9, 17:14, 18:8, 19:3, 19:10, 26:23 fraud [10] - 7:16, 12:17, 14:11, 14:22, 14:24, 16:5, 23:22, 28:17, 31:24 fraudulent [4] - 5:10, 10:21, 11:8, 15:23 front [1] - 7:17</p>	<p>H</p> <p>handle [1] - 11:22 hard [1] - 4:15 hear [4] - 17:2, 19:1, 21:11, 27:10 heard [5] - 13:13, 14:17, 14:19, 16:6, 31:22 hearing [13] - 10:1, 14:10, 18:16, 20:23, 21:8, 23:18, 25:7, 26:17, 27:11, 30:22, 30:23, 31:20, 35:21 held [2] - 9:10, 14:7 help [3] - 8:14, 19:8, 24:9 helpful [3] - 19:10, 32:16, 32:17 hereby [1] - 38:5 herself [1] - 22:15 hide [1] - 16:3 high [1] - 19:11 hold [1] - 35:21 Honor [31] - 3:9, 3:18, 4:11, 7:10, 12:3, 12:12, 12:19, 12:21, 13:20, 14:10, 14:17, 14:19, 16:3, 21:12, 21:22, 22:12, 22:22, 23:3, 23:13, 23:21, 27:13, 27:22, 29:2, 29:15, 31:18, 31:19, 32:7, 33:15, 35:6, 35:24, 37:1 Honor's [5] - 7:15, 12:16, 13:23, 23:20, 35:13 HONORABLE [1] - 1:10 hope [1] - 28:21 hung [1] - 17:22 hypothetical [1] - 15:16</p>	<p>impeachment [11] - 5:16, 6:7, 11:2, 11:10, 13:8, 14:16, 16:10, 16:16, 17:24, 26:23, 30:17 implication [1] - 32:20 important [6] - 21:17, 23:12, 29:14, 29:15, 29:18, 29:25 impossible [1] - 12:4 improper [3] - 7:18, 9:5, 11:16 IN [1] - 1:1 inappropriate [1] - 13:2 inclined [1] - 17:12 include [1] - 29:4 included [1] - 15:3 including [2] - 6:2, 15:25 inconsistent [2] - 15:19, 16:2 inconsistently [1] - 16:14 incorrect [1] - 25:18 indicated [2] - 22:15, 31:25 indication [2] - 34:10 influence [1] - 17:5 information [29] - 4:18, 6:19, 7:5, 7:11, 7:18, 7:24, 8:5, 12:10, 12:15, 13:21, 14:2, 14:5, 14:7, 14:12, 14:14, 15:10, 16:16, 16:18, 21:3, 22:6, 22:16, 22:25, 23:17, 23:21, 24:1, 26:1, 29:6, 29:14, 29:19 insofar [1] - 30:10 insulate [1] - 20:4 intend [2] - 20:8, 35:16 intended [2] - 20:10, 36:3 intending [1] - 32:24 intention [1] - 4:6 interested [1] - 38:12 interim [1] - 33:18 interlocutory [1] - 21:23 intertwined [1] - 8:24 intimated [1] - 21:22 introduced [1] - 4:15 introducing [2] - 14:3, 15:5 Investors [2] - 3:11, 3:13 INVESTORS [2] - 1:7,</p>	<p>1:17 invited [1] - 35:15 invites [1] - 36:17 inviting [1] - 25:23 involved [2] - 11:19, 22:2 irrelevant [1] - 6:21 issue [23] - 4:1, 11:1, 11:2, 17:7, 17:24, 17:25, 19:15, 20:12, 21:21, 22:10, 22:18, 23:4, 26:22, 28:14, 28:20, 30:13, 32:1, 32:17, 33:3, 34:2, 34:24, 35:15 issues [7] - 10:23, 17:10, 19:19, 28:17, 31:24, 34:6, 35:14 items [1] - 31:6 itself [4] - 4:13, 9:4, 9:6, 15:4 IWA [7] - 6:9, 22:25, 23:7, 23:11, 28:7, 31:9, 36:6</p>
<p>F</p> <p>fact [9] - 6:20, 9:9, 10:23, 11:12, 13:25, 15:20, 16:13, 23:19, 27:4 failed [1] - 24:19 fair [1] - 30:5 fairly [1] - 27:18 faith [7] - 5:20, 11:12, 11:20, 13:5, 13:24, 26:24, 29:16 fall [1] - 22:2 false [2] - 6:6, 16:2 falsehood [1] - 16:3 falsely [1] - 10:19 far [6] - 4:9, 4:20, 18:2, 28:3, 30:11, 32:11 favorable [1] - 17:13 Federal [1] - 1:22 few [1] - 12:3 figure [1] - 4:15 file [15] - 23:7, 29:2, 29:8, 31:1, 31:7, 31:21, 32:24, 33:10, 33:16, 33:20, 33:22, 34:21, 35:11, 36:6, 36:8 filed [3] - 33:13, 35:19, 35:25 filing [3] - 33:18, 35:8, 35:9 finder [1] - 13:25 fine [2] - 22:21, 33:25 finish [1] - 28:2 finished [1] - 29:9 first [3] - 21:11, 33:9, 33:10 folks [4] - 18:2, 20:2, 36:23, 36:25 follow [1] - 11:1 following [4] - 8:25, 34:25, 35:8, 35:20 FOR [4] - 1:2, 1:13, 1:17, 2:2 force [1] - 16:4 foregoing [1] - 38:5</p>	<p>G</p> <p>gather [2] - 26:5, 35:10 gentleman [1] - 3:22 gentlemen [1] - 16:1 Georgia [1] - 1:19 given [7] - 9:22, 16:10, 16:17, 23:23, 26:12, 28:17, 31:25 GOLDEN [1] - 1:18 grant [3] - 7:20, 8:1, 8:9 granted [1] - 23:14 Greenbelt [1] - 1:23 GREENBELT [1] - 1:11 GREGORY [1] - 1:18 ground [1] - 15:22 guess [5] - 4:5, 8:24, 9:24, 23:23, 36:9 guessing [1] - 21:24</p>	<p>I</p> <p>idea [2] - 23:13, 29:8 identified [1] - 28:18 identify [2] - 3:5, 3:8 Il [1] - 1:4 imagine [3] - 10:17, 28:9, 34:2 immediate [3] - 18:18, 20:12, 25:4 impact [1] - 28:14 impartial [1] - 30:7 impeach [5] - 12:4, 12:13, 12:22, 14:1, 14:6</p>	<p>J</p> <p>JUDGE [1] - 1:10 Judge [6] - 3:1, 3:3, 5:18, 8:1, 8:14, 24:9 judge [4] - 17:11, 18:8, 19:21, 25:15 judgment [38] - 5:2, 6:1, 10:15, 26:4, 28:14, 28:16, 28:19, 29:2, 29:8, 29:17, 29:21, 30:10, 31:11, 31:14, 31:16, 31:17, 31:21, 31:24, 32:3, 32:23, 32:24, 33:3, 33:11, 33:16, 33:23, 34:6, 34:24, 35:1, 35:4, 35:9, 35:12, 35:16, 35:18, 35:19, 35:21, 36:1, 36:8, 36:18 July [2] - 33:1 junction [1] - 18:23 June [1] - 33:1 jury [19] - 4:7, 5:13, 6:11, 9:4, 12:4, 13:25, 15:5, 16:23, 16:24, 17:2, 17:7, 17:8, 17:11, 22:9, 22:10, 22:11, 23:2, 25:1</p>	<p>K</p> <p>keep [6] - 7:21, 20:24,</p>

<p>21:4, 29:10, 33:5 keeping [2] - 6:18, 29:11 kept [1] - 18:17 key [1] - 15:3 kin [1] - 38:12 kind [4] - 5:12, 20:5, 21:25, 29:22 knowing [2] - 22:6, 29:24 known [2] - 34:2, 34:16 knows [1] - 30:18 Kropf [16] - 3:16, 7:8, 10:17, 12:2, 14:20, 15:9, 15:14, 15:16, 16:7, 22:15, 22:20, 28:17, 28:25, 31:25, 35:24, 36:3 KROPF [16] - 2:3, 2:3, 3:16, 3:20, 3:24, 7:10, 8:20, 8:22, 12:2, 12:9, 12:19, 13:12, 22:21, 28:25, 35:24, 36:4</p>	<p>7:24, 15:6 maintained [4] - 4:19, 6:18, 6:19, 16:18 mandamus [14] - 9:20, 23:7, 23:15, 26:9, 31:8, 32:8, 33:6, 33:18, 34:1, 34:21, 35:1, 36:7, 36:11, 36:15 Maryland [2] - 1:23, 38:5 MARYLAND [2] - 1:2, 1:11 matter [1] - 38:8 MAY [1] - 1:11 mean [11] - 5:10, 6:13, 8:1, 11:15, 11:22, 14:5, 25:20, 25:24, 26:25, 27:2, 31:2 means [3] - 15:7, 15:13, 34:23 memo [1] - 10:24 memorandum [9] - 4:12, 4:14, 4:17, 5:3, 6:15, 8:23, 15:2, 15:6, 22:17 mentioned [1] - 27:23 mere [1] - 27:4 merits [2] - 19:17, 21:24 Messitte [2] - 3:1, 8:1 MESSITTE [1] - 1:10 microphone [1] - 9:23 might [7] - 5:12, 5:14, 24:2, 25:13, 26:19, 26:20, 32:25 mind [6] - 8:15, 8:17, 9:6, 20:25, 26:9, 30:11 minds [1] - 29:22 minute [1] - 31:21 moment [3] - 6:9, 16:21, 26:4 momentarily [1] - 8:7 morning [2] - 3:9, 30:20 MOSELEY [1] - 2:3 most [1] - 23:12 motion [16] - 9:25, 22:9, 31:13, 31:16, 31:21, 32:24, 33:12, 33:23, 35:1, 35:4, 35:9, 35:11, 35:18, 35:21, 35:25 motions [12] - 29:17, 29:20, 31:10, 31:16, 33:10, 33:11, 33:16, 35:22, 36:1, 36:8, 36:13, 36:18 motives [1] - 15:17</p>	<p>move [3] - 9:2, 28:18, 31:24 moved [1] - 35:13 moving [5] - 6:1, 28:16, 29:1, 29:11, 29:23 MR [17] - 3:9, 4:11, 5:14, 10:5, 14:17, 14:19, 21:12, 27:13, 27:22, 28:3, 31:18, 33:15, 33:20, 35:5, 35:11, 36:15, 37:1 MS [22] - 3:13, 3:16, 3:20, 3:24, 6:13, 7:2, 7:4, 7:10, 8:20, 8:22, 12:2, 12:9, 12:19, 13:12, 22:21, 28:25, 31:9, 32:4, 32:6, 34:9, 35:24, 36:4 murky [2] - 4:2, 17:19</p>	<p>obviously [10] - 13:18, 13:24, 21:12, 29:2, 29:8, 29:16, 29:18, 29:21, 31:1, 32:18 odd [1] - 29:12 OF [5] - 1:2, 1:7, 1:9, 1:17, 1:25 Official [2] - 1:22, 38:3 official [1] - 38:17 once [1] - 15:1 one [9] - 4:17, 5:7, 6:7, 11:3, 12:3, 16:21, 23:3, 27:1, 30:10 One [1] - 28:19 opening [1] - 29:5 opinion [34] - 4:7, 4:12, 4:14, 4:17, 4:25, 5:4, 6:15, 8:12, 8:18, 8:19, 9:3, 9:6, 9:7, 10:12, 12:5, 12:7, 12:10, 12:14, 12:16, 12:18, 12:20, 12:25, 13:1, 15:3, 15:4, 15:6, 18:6, 18:12, 20:1, 20:21, 21:19, 22:17, 25:11 opportunity [2] - 15:12, 22:1 oppose [2] - 29:10, 29:23 opposition [2] - 35:17, 36:17 oppositions [2] - 36:10, 36:13 order [30] - 6:16, 6:22, 7:7, 7:21, 7:23, 8:2, 8:17, 8:24, 15:1, 23:4, 23:6, 23:7, 23:8, 23:9, 23:15, 23:24, 24:24, 25:5, 25:10, 26:6, 26:15, 26:16, 28:4, 30:21, 31:5, 32:17, 33:7, 36:5, 36:14, 36:24 ordered [1] - 9:10 ordinarily [1] - 17:1 ought [2] - 16:14, 28:10 outcome [1] - 38:13 overstating [1] - 13:17 own [6] - 6:2, 11:10, 22:5, 22:6, 35:10, 35:18</p>	<p>8:23 part [5] - 6:16, 6:21, 8:23, 18:21, 29:3 parte [5] - 18:16, 20:23, 21:8, 26:17, 30:23 particular [2] - 5:14, 12:4 particularly [2] - 9:25, 11:2 parties [2] - 32:2, 38:9 party [2] - 15:22, 38:12 pass [2] - 6:8, 9:23 Paul [4] - 1:21, 3:20, 3:24, 6:3 percent [1] - 27:3 perhaps [5] - 6:9, 13:5, 18:10, 21:1, 25:14 period [6] - 14:2, 27:19, 27:25, 30:24, 31:7, 33:8 periods [1] - 35:20 perjury [1] - 10:19 PETER [1] - 1:10 petition [30] - 9:20, 23:7, 23:15, 26:8, 27:17, 28:7, 28:10, 28:21, 30:14, 31:1, 31:8, 32:8, 32:17, 32:19, 33:4, 33:5, 33:6, 33:18, 33:22, 34:1, 34:4, 34:12, 34:13, 34:21, 34:25, 35:3, 36:7, 36:11, 36:15 petitioner's [1] - 7:23 phone [1] - 6:2 pieces [1] - 4:17 PILLSBURY [1] - 1:14 PITTMAN [1] - 1:14 PJM-20-1502 [1] - 1:4 place [1] - 6:17 plaintiff [25] - 3:10, 11:2, 11:16, 17:5, 17:13, 18:19, 18:20, 19:1, 20:21, 21:3, 21:16, 21:19, 21:25, 22:2, 22:3, 22:24, 23:10, 23:25, 25:7, 26:17, 29:5, 32:24, 33:13, 36:11, 36:22 Plaintiff [1] - 1:5 PLAINTIFF [1] - 1:13 plaintiff's [11] - 6:15, 18:5, 18:25, 20:13, 20:23, 21:5, 21:9, 22:18, 26:2, 31:6, 35:25</p>
<p>L</p> <p>landlord [1] - 5:22 Lane [1] - 1:23 language [3] - 12:25, 15:21, 15:22 last [2] - 31:19, 31:20 lawyer [1] - 14:13 lawyer's [1] - 6:1 leading [1] - 21:14 lease [2] - 5:8, 15:22 least [5] - 11:13, 18:22, 25:2, 26:25, 34:11 leaving [1] - 5:22 left [2] - 17:19, 22:7 legal [2] - 15:20, 17:10 letter [9] - 4:8, 4:21, 4:25, 5:7, 5:10, 10:6, 10:12, 36:20 lies [1] - 19:15 likelihood [1] - 27:16 limitations [1] - 13:19 line [2] - 16:1, 16:13 LLC [4] - 1:4, 1:7, 1:17, 2:2 LLP [1] - 1:14 look [1] - 9:18 luck [1] - 20:19</p>	<p>M</p> <p>machine [1] - 38:9 maintain [3] - 7:5,</p>	<p>N</p> <p>name [1] - 3:23 necessarily [3] - 9:21, 19:8, 24:3 necessary [1] - 34:7 need [24] - 7:5, 11:22, 16:20, 17:7, 17:24, 18:3, 18:4, 18:5, 18:10, 22:19, 24:3, 25:24, 26:4, 27:8, 27:9, 28:10, 28:15, 28:22, 32:20, 33:21, 33:24, 34:3, 34:12 needs [4] - 18:7, 23:6, 27:2, 28:8 negates [1] - 29:16 never [2] - 6:5, 6:22 NO [1] - 1:4 non [1] - 13:21 non-privileged [1] - 13:21 none [1] - 24:16 note [1] - 3:7 NOTES [1] - 1:25 nothing [4] - 6:10, 18:22, 32:1 notice [1] - 34:16 notion [1] - 21:15 number [2] - 12:3, 33:9 NW [3] - 1:15, 1:19, 2:4</p>	<p>O</p> <p>objected [1] - 15:15 objection [1] - 28:4 obligation [1] - 36:16</p>	<p>P</p> <p>package [1] - 34:19 papers [1] - 35:22 paraphrasing [1] - 5:7 parcel [3] - 6:16, 6:21,</p>

<p>plaintiffs [9] - 7:13, 10:9, 23:5, 23:16, 23:20, 29:1, 29:9, 35:15, 36:16</p> <p>plan [6] - 11:6, 13:10, 15:5, 23:9, 29:10, 31:23</p> <p>PLAZA [1] - 1:4</p> <p>Plaza [1] - 3:8</p> <p>PLLC [1] - 2:3</p> <p>point [11] - 5:5, 8:7, 8:8, 9:2, 18:22, 21:20, 22:4, 22:21, 29:10, 29:13, 31:11</p> <p>points [1] - 17:1</p> <p>port [1] - 25:22</p> <p>pose [1] - 16:21</p> <p>posed [5] - 15:16, 15:18, 16:7, 16:8, 25:20</p> <p>posing [4] - 13:7, 19:19, 20:17, 20:18</p> <p>position [3] - 5:22, 6:10, 7:8</p> <p>positively [1] - 18:10</p> <p>possible [3] - 5:9, 19:17, 32:18</p> <p>possibly [1] - 12:21</p> <p>potentially [1] - 36:6</p> <p>practice [1] - 35:13</p> <p>precisely [1] - 16:4</p> <p>prejudice [2] - 20:15, 26:10</p> <p>prepared [8] - 9:21, 19:3, 20:7, 21:4, 25:6, 25:25, 26:15, 27:9</p> <p>prerogative [1] - 17:17</p> <p>Present [1] - 1:21</p> <p>present [3] - 22:1, 27:4, 28:10</p> <p>presentation [1] - 18:16</p> <p>presented [6] - 5:13, 5:15, 6:11, 10:2, 16:8, 17:4</p> <p>presenting [1] - 28:11</p> <p>presently [1] - 4:21</p> <p>pressing [1] - 29:10</p> <p>presume [1] - 28:15</p> <p>prevails [1] - 22:3</p> <p>prevent [1] - 32:2</p> <p>previously [2] - 28:18, 38:7</p> <p>principals [2] - 3:17, 11:3</p> <p>privilege [1] - 16:4</p> <p>privileged [17] - 7:12, 7:15, 9:11, 12:12, 12:24, 13:15, 13:21,</p>	<p>14:2, 14:5, 14:6, 14:7, 14:12, 14:13, 14:14, 15:10, 22:25, 23:17</p> <p>problem [8] - 8:2, 9:8, 9:14, 11:15, 14:25, 16:24, 17:11, 18:22</p> <p>proceed [1] - 28:19</p> <p>proceeding [2] - 28:22, 32:2</p> <p>proceedings [2] - 37:2, 38:6</p> <p>PROCEEDINGS [1] - 1:9</p> <p>produce [2] - 9:10, 9:25</p> <p>produced [1] - 28:5</p> <p>production [5] - 15:1, 23:15, 23:24, 27:10, 31:6</p> <p>proposal [1] - 18:3</p> <p>propose [2] - 12:21, 25:5</p> <p>proposing [2] - 7:11, 12:12</p> <p>prospect [2] - 9:19, 19:11</p> <p>provided [3] - 13:15, 23:5, 28:6</p> <p>provision [1] - 28:5</p> <p>public [4] - 18:6, 18:7, 18:11, 21:18</p> <p>publish [1] - 4:7</p> <p>publishing [2] - 4:12, 5:4</p> <p>pull [2] - 34:3, 34:12</p> <p>purely [1] - 11:9</p> <p>purpose [1] - 12:11</p> <p>purposes [4] - 15:23, 16:9, 16:16, 19:5</p> <p>put [6] - 11:24, 18:11, 20:23, 22:21, 30:6, 30:11</p> <p>puts [2] - 29:4, 29:6</p>	<p>raised [1] - 21:21</p> <p>rather [1] - 34:18</p> <p>rationale [1] - 24:6</p> <p>reaction [1] - 21:10</p> <p>read [3] - 8:4, 8:8, 13:3</p> <p>reads [1] - 8:2</p> <p>real [2] - 20:15, 26:22</p> <p>really [12] - 7:25, 8:9, 8:15, 9:4, 13:7, 14:2, 14:9, 17:25, 19:15, 20:11, 24:12, 25:3</p> <p>reasonable [1] - 34:21</p> <p>reasoning [2] - 23:16, 23:24</p> <p>Rebecca [3] - 3:13, 31:9, 32:6</p> <p>REBECCA [1] - 1:18</p> <p>recited [1] - 4:14</p> <p>record [7] - 11:18, 18:6, 18:7, 18:11, 22:7, 22:23, 36:21</p> <p>recorded [1] - 38:9</p> <p>records [1] - 21:17</p> <p>reference [3] - 9:11, 26:19, 26:20</p> <p>referring [1] - 15:3</p> <p>reflect [1] - 18:10</p> <p>reflected [1] - 22:16</p> <p>regard [6] - 9:17, 9:24, 13:10, 18:14, 18:15, 36:10</p> <p>regarding [1] - 11:6</p> <p>regardless [2] - 6:20, 28:19</p> <p>reject [1] - 27:17</p> <p>relative [1] - 6:11</p> <p>relevance [2] - 10:3, 26:3</p> <p>relevant [2] - 11:10, 18:20</p> <p>relief [2] - 7:20, 8:9</p> <p>remain [2] - 18:12, 20:14</p> <p>remandment [1] - 31:13</p> <p>remember [1] - 3:6</p> <p>remind [1] - 30:2</p> <p>removed [1] - 30:3</p> <p>Renee [5] - 1:22, 3:2, 38:3, 38:15, 38:16</p> <p>reported [1] - 38:6</p> <p>Reporter [3] - 1:22, 38:3, 38:17</p> <p>reporter [2] - 3:2, 3:7</p> <p>REPORTER [1] - 3:3</p> <p>representations [1] - 5:19</p> <p>request [4] - 7:22, 7:23, 16:18, 27:17</p>	<p>requested [1] - 18:24</p> <p>requiring [1] - 28:4</p> <p>rescue [1] - 24:5</p> <p>reserve [1] - 16:11</p> <p>reserves [1] - 25:13</p> <p>resolve [2] - 16:20, 35:14</p> <p>resolved [4] - 28:20, 33:2, 33:4, 34:6</p> <p>respect [6] - 21:13, 23:1, 28:16, 32:7, 32:12, 32:14</p> <p>respond [7] - 11:25, 12:2, 29:5, 35:2, 36:12, 36:16</p> <p>response [3] - 35:20, 36:17, 36:21</p> <p>responses [2] - 12:3, 35:7</p> <p>restrictions [1] - 6:18</p> <p>restrictive [1] - 7:7</p> <p>rethought [1] - 19:24</p> <p>revealed [1] - 23:9</p> <p>reversal [1] - 19:17</p> <p>reversed [4] - 7:14, 14:10, 14:21, 22:24</p> <p>review [6] - 6:15, 18:19, 20:13, 21:6, 32:19, 34:6</p> <p>revisit [1] - 35:15</p> <p>risk [3] - 24:12, 25:18, 25:22</p> <p>RMR [2] - 1:22, 38:16</p> <p>road [1] - 20:4</p> <p>ROCK [2] - 1:4, 2:2</p> <p>Rock [5] - 1:21, 3:8, 3:15, 3:16, 3:17</p> <p>RPR [1] - 38:16</p> <p>RSD [2] - 6:3, 6:5</p> <p>Rubin [4] - 1:21, 3:21, 3:24, 6:3</p> <p>rule [1] - 23:5</p> <p>ruled [2] - 4:18, 15:1</p> <p>rules [1] - 26:8</p> <p>ruling [2] - 7:15, 27:20</p> <p>rulings [2] - 21:24</p>	<p>20:17, 27:7</p> <p>sealed [3] - 20:24, 20:25, 21:5</p> <p>sealing [1] - 21:13</p> <p>second [9] - 3:22, 9:18, 9:19, 19:9, 19:11, 21:24, 24:9, 26:8, 27:17</p> <p>see [11] - 7:13, 7:19, 8:15, 16:11, 20:6, 20:11, 21:1, 21:10, 26:2, 26:14, 36:13</p> <p>seeing [1] - 16:25</p> <p>send [3] - 20:2, 36:14, 36:20</p> <p>sense [2] - 8:8, 21:4</p> <p>separate [1] - 28:13</p> <p>September [4] - 27:24, 31:3, 33:1, 34:8</p> <p>serve [1] - 18:7</p> <p>set [3] - 3:25, 27:24, 31:19</p> <p>seven [3] - 34:12, 34:14</p> <p>Seventeenth [1] - 1:15</p> <p>several [1] - 14:19</p> <p>SHAW [1] - 1:14</p> <p>shell [1] - 5:23</p> <p>short [4] - 25:6, 26:5, 28:12, 30:19</p> <p>shorthand [1] - 38:9</p> <p>shot [1] - 25:19</p> <p>sides [1] - 36:7</p> <p>simply [7] - 8:13, 9:12, 11:11, 14:14, 24:20, 32:25, 34:20</p> <p>simultaneous [1] - 32:10</p> <p>simultaneously [2] - 31:13, 35:19</p> <p>situation [3] - 4:9, 11:25, 21:25</p> <p>solicit [1] - 15:20</p> <p>somewhat [1] - 17:19</p> <p>soon [2] - 31:7, 35:2</p> <p>sorry [6] - 8:22, 28:1, 31:8, 31:14, 33:5, 36:11</p> <p>sort [7] - 4:4, 19:19, 21:23, 25:2, 30:8, 34:19, 34:24</p> <p>sought [1] - 9:13</p> <p>SOUTHERN [1] - 1:3</p> <p>speaking [2] - 3:6, 32:5</p> <p>specific [2] - 5:3, 22:16</p> <p>specifically [2] - 7:6, 19:22</p> <p>specifics [2] - 17:23,</p>
	<p>Q</p>			
	<p>questions [5] - 5:25, 11:7, 13:22, 14:4, 19:18</p> <p>quick [1] - 27:18</p> <p>quickly [4] - 32:18, 33:4, 33:7, 33:19</p> <p>quite [5] - 8:16, 9:20, 16:6, 21:7, 24:4</p>			
	<p>R</p>			
	<p>R-U-B-I-N [1] - 3:24</p> <p>raise [2] - 19:19, 25:14</p>		<p>S</p>	
			<p>Sara [3] - 3:16, 28:25, 35:24</p> <p>SARA [1] - 2:3</p> <p>saw [1] - 22:9</p> <p>schedule [3] - 29:11, 29:23, 33:13</p> <p>scope [2] - 29:7, 29:12</p> <p>seal [14] - 4:19, 6:18, 6:19, 7:5, 7:22, 7:24, 8:6, 15:7, 16:19, 18:12, 18:17, 20:14,</p>	

<p>34:11 speed ^[1] - 32:20 spell ^[1] - 4:4 SPRING ^[1] - 1:4 Spring ^[1] - 3:8 Springs ^[4] - 1:21, 3:15, 3:16, 3:17 SPRINGS ^[1] - 2:2 standpoint ^[4] - 15:9, 17:10, 24:14, 25:21 start ^[2] - 4:5, 6:9 state ^[1] - 15:19 statement ^[1] - 14:22 statements ^[2] - 6:7, 38:8 States ^[1] - 38:4 STATES ^[2] - 1:1, 1:10 statute ^[1] - 13:19 stay ^[5] - 26:6, 26:7, 27:10, 28:3, 28:22 stayed ^[2] - 30:24, 31:11 staying ^[2] - 28:4, 31:5 stenographically ^[1] - 38:6 STENOTYPE ^[1] - 1:25 step ^[1] - 19:12 still ^[2] - 23:13, 23:23 straight ^[1] - 36:5 strategy ^[2] - 15:21, 25:21 Street ^[3] - 1:15, 1:19, 2:4 strictly ^[2] - 8:24, 17:10 strike ^[1] - 35:13 struggling ^[1] - 23:13 stuff ^[1] - 17:14 subject ^[2] - 19:17, 26:25 submission ^[2] - 4:21, 4:25 submit ^[1] - 28:7 suborn ^[1] - 10:18 substantial ^[1] - 18:21 substantiate ^[1] - 22:17 suggest ^[1] - 13:1 suggests ^[1] - 13:4 Suite ^[3] - 1:19, 1:23, 2:4 summary ^[36] - 5:2, 6:1, 10:15, 28:14, 28:16, 28:19, 29:2, 29:8, 29:17, 29:21, 31:10, 31:14, 31:16, 31:17, 31:21, 31:24, 32:3, 32:23, 32:24, 33:3, 33:10, 33:16,</p>	<p>33:23, 34:6, 34:24, 35:1, 35:4, 35:9, 35:11, 35:16, 35:18, 35:21, 36:1, 36:8, 36:18 supervision ^[1] - 38:10 suppose ^[1] - 11:2 Suppose ^[1] - 11:6 surmise ^[1] - 16:17 surprise ^[1] - 34:22 suspect ^[1] - 10:12 suspended ^[1] - 31:19</p> <p style="text-align: center;">T</p> <p>table ^[5] - 12:7, 13:9, 19:5, 30:6, 30:12 tad ^[1] - 13:18 tainted ^[1] - 30:9 Taylor ^[4] - 1:21, 3:20, 6:3, 16:13 teed ^[1] - 34:5 TELEPHONIC ^[1] - 1:9 ten ^[14] - 33:15, 34:20, 34:25, 35:1, 35:8, 35:19, 36:4, 36:5, 36:6, 36:7, 36:9, 36:12 ten-day ^[1] - 36:12 term ^[3] - 21:21, 25:6, 26:5 terms ^[4] - 6:25, 11:22, 18:2, 25:2 testifies ^[1] - 16:13 testify ^[1] - 10:19 testimony ^[6] - 6:2, 14:13, 15:17, 16:2, 22:13, 38:8 THE ^[44] - 1:1, 1:2, 1:10, 1:13, 1:17, 2:2, 3:1, 3:3, 3:4, 3:11, 3:15, 3:19, 3:22, 3:25, 5:6, 6:8, 6:24, 7:3, 7:6, 7:19, 8:21, 9:1, 11:1, 12:7, 12:18, 12:25, 14:18, 16:20, 22:20, 24:3, 27:14, 28:1, 28:24, 30:2, 31:15, 32:5, 32:16, 33:17, 34:15, 35:7, 35:17, 36:3, 36:9, 36:19 themselves ^[1] - 12:15 theories ^[1] - 21:14 thereafter ^[1] - 38:10 therefore ^[4] - 14:12, 14:13, 15:10, 21:16 thereof ^[1] - 38:13 thinking ^[4] - 28:1,</p>	<p>29:21, 30:7, 30:8 thinks ^[2] - 24:15, 29:25 third ^[1] - 15:22 threatened ^[1] - 34:1 three ^[2] - 4:17, 15:2 timing ^[2] - 32:7, 32:11 today ^[15] - 6:3, 22:19, 23:8, 26:16, 27:8, 31:5, 31:16, 32:13, 33:7, 33:8, 33:16, 36:6, 36:14, 36:24 together ^[3] - 34:3, 34:4, 34:12 transcribed ^[1] - 38:10 TRANSCRIPT ^[1] - 1:9 transcript ^[11] - 4:20, 4:23, 10:6, 10:7, 10:10, 10:24, 23:8, 27:11, 30:22, 38:6 transcription ^[1] - 38:11 TRANSCRIPTION ^[1] - 1:25 transfer ^[1] - 5:8 trial ^[26] - 4:9, 11:23, 12:4, 12:20, 12:22, 14:15, 18:8, 20:1, 20:3, 20:14, 22:8, 22:10, 23:2, 25:1, 27:14, 27:21, 27:23, 27:24, 27:25, 30:5, 31:3, 32:21, 33:3, 34:7, 36:1 Trial ^[2] - 6:25, 7:4 trials ^[1] - 16:23 Troy ^[3] - 1:21, 3:20, 6:3 true ^[5] - 5:23, 15:14, 18:14, 18:15, 38:5 try ^[9] - 7:18, 19:13, 19:16, 20:4, 20:19, 24:5, 24:23, 30:4, 31:2 trying ^[3] - 31:11, 32:13, 34:19 tune ^[1] - 33:25 tunnel ^[1] - 19:16 two ^[11] - 5:9, 15:2, 15:25, 19:25, 23:3, 29:22, 31:6, 31:12, 33:22, 33:24 types ^[1] - 10:23 typically ^[1] - 35:14</p> <p style="text-align: center;">U</p> <p>ultimate ^[1] - 22:14 ultimately ^[2] - 20:15,</p>	<p>22:11 unclear ^[1] - 32:10 under ^[16] - 4:19, 6:18, 6:19, 7:5, 7:22, 7:24, 8:6, 15:7, 16:19, 17:20, 18:12, 18:17, 20:14, 22:24, 28:5, 38:10 undercut ^[1] - 13:7 underlying ^[1] - 28:22 understood ^[1] - 11:10 undertaking ^[1] - 28:6 United ^[1] - 38:4 UNITED ^[2] - 1:1, 1:10 unless ^[3] - 30:13, 31:20, 36:16 unlikely ^[3] - 9:16, 9:20, 17:17 unquestionably ^[1] - 7:12 unscramble ^[1] - 20:2 unseal ^[5] - 6:22, 18:4, 19:21, 20:10, 25:8 unsealed ^[4] - 6:10, 7:1, 18:23, 26:1 unsealing ^[2] - 20:11, 20:17 unusual ^[2] - 21:22, 31:25 up ^[13] - 11:12, 17:22, 20:19, 21:1, 24:14, 25:14, 25:23, 26:22, 27:9, 28:2, 30:19, 34:5, 34:20 useful ^[1] - 10:14</p> <p style="text-align: center;">V</p> <p>vacate ^[2] - 8:17, 15:11 vacated ^[8] - 6:17, 6:20, 6:21, 6:22, 12:16, 12:18, 14:25, 23:15 vacating ^[4] - 9:9, 9:11, 23:24 vacuum ^[3] - 4:16, 10:11, 12:13 value ^[6] - 5:1, 10:7, 10:11, 10:13, 10:14 verdict ^[1] - 17:1 view ^[5] - 6:14, 9:5, 9:19, 27:3</p> <p style="text-align: center;">W</p> <p>wait ^[2] - 5:8, 12:18 waiting ^[1] - 31:20 wants ^[2] - 21:2, 30:16</p>	<p>Warranty ^[2] - 3:11, 3:13 WARRANTY ^[2] - 1:7, 1:17 Washington ^[2] - 1:15, 2:4 WEDNESDAY ^[1] - 1:11 week ^[6] - 31:19, 33:21, 33:22, 33:25, 34:3 weeks ^[2] - 33:23, 33:24 whatsoever ^[1] - 12:11 whole ^[1] - 20:2 WILLIAM ^[1] - 1:14 wind ^[1] - 30:19 WINTHROP ^[1] - 1:14 witness ^[13] - 10:1, 10:19, 11:3, 11:9, 11:11, 12:5, 12:6, 14:4, 15:25, 17:25, 23:19, 30:23 witnesses ^[6] - 6:2, 10:8, 15:17, 22:6, 38:8 witnesses' ^[1] - 6:2 works ^[1] - 11:23 worried ^[1] - 30:6 worry ^[1] - 12:8 writ ^[3] - 34:1, 34:3, 34:4 written ^[1] - 23:6 wrote ^[2] - 5:7, 14:14</p> <p style="text-align: center;">Y</p> <p>years ^[3] - 5:9, 19:25, 20:1 yesterday ^[1] - 31:18 yourselves ^[2] - 3:5, 3:8</p>
---	---	---	--	--

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE

6500 CHERRYWOOD LANE
GREENBELT, MARYLAND 20770
301-344-0632

MEMORANDUM ORDER

TO: Counsel of Record

FROM: Judge Peter J. Messitte

RE: Rock Spring Plaza II, LLC v. Investors Warranty of Am., LLC, et al.
No. 20-cv-1502

DATE: May 1, 2024

* * *

On February 21, 2024, the U.S. Court of Appeals for the Fourth Circuit granted in part and denied in part a petition for a writ of mandamus filed by Defendant Investors Warranty of America, LLC (IWA). In its petition, IWA requested that the Fourth Circuit vacate an Order from this Court requiring IWA to produce to Plaintiff Rock Spring Plaza II, LLC (Plaza) three documents that this Court had found to fall within the crime-fraud exception to the attorney-client privilege. IWA also asked the Fourth Circuit to issue an order directing this Court to maintain under seal all documents produced to or generated by this Court that related to the allegedly privileged documents.

Before ruling on IWA's petition, the Fourth Circuit ordered, over IWA's objection, IWA to serve on Plaza an unredacted copy of this Court's Memorandum Opinion and Order, which contained excerpts of the communications that IWA claims are privileged. *See* Doc. 23, *In re Investors Warranty of Am., LLC*, No. 23-1928 (4th Cir. Dec. 7, 2023). The Fourth Circuit then denied IWA's motion to clarify its order requiring service of the unredacted Memorandum Opinion, in which IWA argued that its claims of privilege would be jeopardized if it were made to provide Plaza an unredacted copy of this Court's Opinion and Order. *See* Doc. 25, *id.* (4th Cir. Dec. 8, 2023). The upshot of these appellate rulings is that Plaza and its counsel have now seen portions of the communications that IWA claims are privileged.

As noted, the Fourth Circuit eventually granted in part and denied in part IWA's petition. *See* Doc. 34, *id.* (4th Cir. Feb. 21, 2024). The Fourth Circuit's ruling vacated this Court's Order requiring the production of the allegedly privileged documents but denied IWA's request for an order directing this Court to maintain "certain information under seal and to reassign the case upon remand." *Id.*

In light of the Fourth Circuit's ruling, this Court invited counsel for the parties to brief the issue of what information, if any, this Court should unseal. *See* ECF No. 389.

Plaza then filed a Motion to Unseal Crime-Fraud Information (ECF No. 392), IWA filed an opposition (ECF No. 396), and Plaza replied (ECF No. 398). Plaza has also filed a Motion to Strike Defendants' Jury Demands (ECF No. 400).

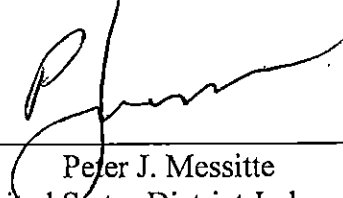
Today, May 1, 2024, the Court held an on the record telephone conference with counsel for the parties.

Having considered the parties' filings with respect to both of Plaza's Motions and based on arguments made during the telephone conference, the Court makes the following rulings for the reasons stated on the record:

1. Plaza's Motion to Unseal Crime-Fraud Information (ECF No. 392) is **GRANTED IN PART** and **DENIED IN PART** as follows:
 - a. The Court **WILL NOT** unseal any documents at this juncture;
 - b. Subject to the limitation set forth below, however, the Clerk of Court (or defense counsel) **SHALL** promptly make available to Plaza's counsel (for counsel's eyes only) ECF No. 289, which is IWA's *ex parte* letter-brief opposing the Court's preliminary determination that the three documents fell within the crime-fraud exception, and the transcript of the *ex parte* hearing on June 20, 2023, at which IWA presented evidence on the issue of the crime-fraud exception;
 - c. The production just mentioned **SHALL** be **STAYED** for ten (10) days from this date, within which time IWA may file a further petition for a writ of mandamus with the Fourth Circuit and, if such a petition is filed, the production order **SHALL** remain **STAYED** until such time as IWA's petition is denied or granted by the Fourth Circuit;
 - d. The Court **RESERVES**, for the time being, any decision with respect to the extent to which, if at all, the contents or gist of certain communications between Defendants and their counsel may be introduced as evidence at trial. That decision will depend on the manner in which Plaza seeks to use such evidence (for example, by way of impeachment);
2. If the parties intend to submit Motions for Summary Judgment, said Motions **SHALL** be filed simultaneously in accordance with the following schedule:
 - a. Motions are due ten (10) days after the ten-day window for IWA to file its petition with the Fourth Circuit has expired;
 - b. Oppositions to the said Motions will be due ten (10) days thereafter; and
 - c. Replies, if any, will be due ten (10) days after the deadline for oppositions.
3. Plaza's Motion to Strike Defendants' Jury Demands (ECF No. 400) is **DENIED**. The Court will submit all counts (that survive summary judgment) to the Jury. However, insofar as a claim may be more appropriate for a decision by the Court alone, as opposed

to a Jury, the Jury's verdict will be deemed advisory only. The Court will make an appropriate decision as to which claims are for the Jury and which are for the Court following the Jury's verdict.

Despite the informal nature of this ruling, it shall constitute an Order of the Court and the Clerk is directed to docket it accordingly.



Peter J. Messitte
United States District Judge

CC: Court file
Counsel of Record